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The Empire of the Tetrarchs

Imperial Pronouncements and Government

AD 284–324

Simon Corcoran

Revised Edition

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Genitoribus meis dilectissimis. . . .

tam matri Patriciae (1926–87), coeptis faultrici,
quam patri Iacobo, adiutori perfectis

PREFACE TO PAPERBACK EDITION

I am taking advantage of the good fortune provided by the paperback edition of *The Empire of the Tetrarchs* and the kind permission of Oxford University Press to offer some additional notes and bibliography. Additional Notes are flagged throughout the text with an asterisk. These are necessarily selective, and have been prompted principally by the need to take account of the important epigraphic discoveries of Denis Feissel at Ephesus. I should like to thank him for his generous assistance.

Thanks are also due to Tom Elliott of the University of North Carolina at Chapel Hill for his encyclopaedic knowledge of the capitation and cadastral tables.

S.C.

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August 1999*

PREFACE

SEVENTEEN hundred years ago, in the year 294, in the first consulship of Constantius Caesar and Maximian Galerius Caesar, the first tetrarchy completed its first year of existence and already success attended its efforts. Constantius Caesar reconquered Boulogne from the British usurper Carausius, and Diocletian himself, having celebrated his *decennalia* the previous November, while his court was based at Sirmium on the Sava, undertook a major offensive against the Sarmatians across the Danube in the summer. He also busied himself with other imperial business, such as coinage reform, and the usual mass of petitions and correspondence. In dealing with such administrative and legal matters, Diocletian was assisted by his chancery officials, with their various responsibilities in regard to different types of imperial pronouncements. It is possible to imagine, without doing too much violence to historical probability, that present at court were a clutch of able jurists, including Hermogenian, Master of Petitions, Arcadius Charisius, Master of Latin Letters, and Gregorius, Master of Memory. Of the diverse documents thus produced, for instance, on 1 March 294, the anniversary of the tetrarchy, a rescript on the disposal of pledges was issued to a lady called Aviana (*CJ* 8. 27. 15), and from the year as a whole about five hundred other replies to private petitioners survive, though many more may have been issued. In August 294, a letter was sent to Diogenes, governor of the Aegean islands, on the demarcation of authority between himself and imperial financial officials, and not long before an edict was issued which laid down judicial procedures.

It is the aim of this book to examine this vast range of texts produced by the emperors of the tetrarchic era and their palatine officials, texts which can be seen, not only as important documents for illustrating administration, but also as examples of literary and rhetorical composition, and of legal reasoning of a high order. I hope that the summary catalogues and discussions will reveal the variety of the documents, some of the difficulties of chronology and interpretation, and the problems of relating the picture created by surviving imperial pronouncements to the limiting realities of government at the time.

This project started in 1987 as work for a doctoral thesis at St John's

College, Oxford, initially aiming to study the constitutions (mainly private rescripts) of Diocletian. The area of study was subsequently expanded to include the varied and contrasting material available for the entire tetrarchic period up to 324, the year in which Constantine defeated his co-emperor Licinius and terminated the dynastic confusion and rivalry attendant on Diocletian's tetrarchic experiment. The final thesis was submitted in 1992, and the present book preserves essentially the same form, although with certain revisions and modifications. I have provided translations for most of the extended Latin passages in the body of the text. I have tried to keep these literal, in order to give an idea of the original style, even at the cost of stilted English.

I must first express gratitude to Professor Fergus Millar for his unflagging encouragement, advice, and patience at all stages of my work. Professor John Matthews was a cheery and perceptive supervisor from 1990 to 1992. Professor Tony Honoré permitted me to see drafts of the second edition of *Emperors and Lawyers* and I am grateful for the illuminating discussions that we have enjoyed together. I also wish to thank Dr Janet DeLaine for shared work in trying to make sense of the Prices Edict. For references, articles, and diverse assistance gratefully received, thanks is due to a great many others, more than can be listed, but including: Dr Gillian Clark, Professor Michael Crawford, Dr Robin Darwall-Smith, Dr Raymond Davis, Mr Peter Gilliver, Professor the Revd Stuart Hall, Dr Jill Harries, Dr Richard Hawley, Dr David Jennings, Dr Cathy King, Dr E. Matthews, Dr Nicholas Milner, Dr Tim Parkin, Dr J. Reynolds, Dr C. Roueché, Dr Benet Salway, Dr D. Srejić, and the staff of the Ashmolean, Old Bodleian, and Bodleian Law Libraries, the St John's College Library, and the Sydney Jones Library of the University of Liverpool; and also Hilary O'Shea of the Press for her patience and understanding.

Last but not least, I must thank my father, for his constant moral and financial support; and Ashley, for a computer expertise that dissolved problems and rendered word-processing an invaluable boon!

However, while I acknowledge so much help and support, any remaining errors or oversights are my responsibility alone.

S.C.

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July 1994

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MAP

The Roman Empire under the Tetrarchs, showing the dioceses and the principal Tetrarchic residences

ABBREVIATIONS

*	See Additional Notes
AE	<i>L'Année Epigraphique</i>
ALRW	<i>Appendices Legis Romanae Wisigothorum Duae (FIRA² ii, 670-9)</i>
Augustine, <i>Brev. Coll.</i>	<i>Breviculus Collationis Cum Donatistis (CSEL 53)</i>
Augustine, <i>C. Cresc.</i>	<i>Contra Cresconium (CSEL 52)</i>
Augustine, <i>Don. Post Gesta</i>	<i>Contra Partem Donati Post Gesta (CSEL 53)</i>
Augustine, <i>Ep.</i>	<i>Epistulae (CSEL 34)</i>
Barnes, <i>CE</i>	T. D. Barnes, <i>Constantine and Eusebius</i> (Cambridge, Mass. and London, 1981).
Barnes, <i>NE</i>	T. D. Barnes, <i>The New Empire of Diocletian and Constantine</i> (Cambridge, Mass. and London, 1982).
Bruns ⁷	K. G. Bruns (rev. O. Gradenwitz), <i>Fontes Iuris Romani Antiqui. Leges et Negotia</i> , 7th edn. (Tübingen, 1909).
CG	<i>Codex Gregorianus</i>
CGV	<i>Epitome Codicis Gregoriani Wisigothica (FIRA² ii, 656-64)</i>
CH	<i>Codex Hermogenianus</i>
Chr. ii	L. Mitteis and U. Wilcken, <i>Grundzüge und Chrestomathie der Papyruskunde</i> , ii/2 (Leipzig, 1912).
Chron. Min. i	<i>Chronica Minora</i> , i (<i>Monumenta Germaniae Historica. Auctores Antiquissimi</i> , 9, (ed). Th. Mommsen; Berlin, 1892).
CHV	<i>Epitome Codicis Hermogeniani Wisigothica (FIRA² ii, 665)</i>
CIL	<i>Corpus Inscriptionum Latinarum</i>
CJ	<i>Codex Iustinianus</i> . P. Krüger (ed.), <i>Corpus Iuris Civilis</i> , ii (Berlin, 1877), omitting bracketed numbers. The few references to Krüger's <i>editio maior</i> (Berlin, 1877) are specified where they occur.
CLRE	R. S. Bagnall, A. Cameron, S. R. Schwartz, and K. A. Worp, <i>Consuls of the Later Roman Empire</i> (Philological Monographs of the

	American Philological Association, 36; Atlanta, 1987).
<i>Coll.</i>	<i>Mosaicarum et Romanarum Legum Collatio</i> (FIRA ² ii, 544–89 = IA ii, 329–94).
<i>Coll. Avell.</i>	<i>Collectio Avellana</i> (CSEL 35)
<i>Collectio</i>	P. Krüger, Th. Mommsen, and W. Studemund (eds.), <i>Collectio Librorum Iuris Anteiustiniani</i> , iii (Berlin, 1890).
<i>Cons.</i>	<i>Consultatio Veteris Cuiusdam Iurisconsulti</i> (FIRA ² ii, 594–613 = IA ii, 490–514).
<i>CSEL</i>	<i>Corpus Scriptorum Ecclesiasticorum Latinorum</i>
<i>CTh</i>	<i>Codex Theodosianus</i> . Th. Mommsen and P. Meyer (eds.), 2 vols. (Berlin, 1905). References to Krüger's edn. of Bks. 1–8 (Berlin, 1923, 1926) are specified where they occur.
<i>D</i>	<i>Digesta Iustiniani</i> . Th. Mommsen (ed.), <i>Corpus Iuris Civilis</i> , i (Berlin, 1872).
Eus. <i>HE</i>	Eusebius, <i>Historia Ecclesiastica</i>
Eus. <i>MP</i>	Eusebius, <i>De Martyribus Palaestinae</i> . Cited from G. Bardy, <i>Sources Chrétiennes</i> , 55 (Paris, 1958).
Eus. <i>VC</i>	Eusebius, <i>De Vita Constantini</i>
<i>Expositio</i>	<i>Expositio Totius Mundi et Gentium</i> . J. Rougé (ed.), <i>Sources Chrétiennes</i> , 124 (Paris, 1966).
<i>FHG</i>	<i>Fragmenta Historicorum Graecorum</i> , ed. C. Müller (5 vols.; Paris, 1851–70).
<i>FIRA</i> ²	S. Riccobono <i>et al.</i> , <i>Fontes Iuris Romani Anteiustiniani</i> (2nd edn; 3 vols.; Florence, 1940–3).
<i>FV</i>	<i>Fragmenta Quae Dicuntur Vaticana</i> (FIRA ² ii, 464–540 = IA ii, 207–324).
Honoré, <i>EL</i> ¹	T. Honoré, <i>Emperors and Lawyers</i> , 1st edn. (London, 1981).
Honoré, <i>EL</i> ²	T. Honoré, <i>Emperors and Lawyers</i> , 2nd edn. with a <i>palingenesia</i> of 3rd-cent. imperial rescripts AD 193–305 (Oxford, 1994).
<i>IA</i> i, ii	Ph. E. Huschke, E. Seckel, and B. Kübler (eds.), <i>Iurisprudentia Anteiustiniana</i> (2 vols.; Leipzig, 1908–27).
<i>IG</i>	<i>Inscriptiones Graecae</i>
<i>IGRR</i>	<i>Inscriptiones Graecae ad Res Romanas Pertinentes</i>

<i>IL Afr</i>	R. Cagnat, A. Merlin, and L. Chatelain, <i>Inscriptions Latines d'Afrique (Tripolitaine, Tunisie, Maroc)</i> (Paris, 1923).
<i>ILS</i>	H. Dessau, <i>Inscriptiones Latinae Selectae</i>
<i>Inscr. Cret.</i> i	M. Guarducci, <i>Inscriptiones Creticae</i> , i (Rome, 1935).
Julian	The works of Julian are cited according to the numeration in the Loeb edn. of W. C. Wright, i, ii (1913), iii (1923).
Lact. <i>DI</i>	Lactantius, <i>Divinae Institutiones</i>
Lact. <i>DMP</i>	Lactantius, <i>De Mortibus Persecutorum</i>
<i>LRB</i>	<i>Lex Romana Burgundionum (FIRA² ii, 714-50).</i>
Malalas	John Malalas, <i>Chronographia</i> , (ed.) L. Dindorf (Bonn, 1831).
Optatus	Optatus Milevitanus, <i>Libri VII</i> , (ed.) K. Ziwsa (<i>CSEL</i> 26; 1893).
<i>Pan. Lat.</i>	<i>XII Panegyrici Latini</i> , (ed.) R. Mynors (Oxford, 1964).
<i>P. Beatty Panop.</i>	See Skeat (1964).
<i>P. Cairo Isid.</i>	See Boak and Youtie (1960).
<i>PE pr.</i>	Prices Edict composite version of preamble in Giacchero (1974), i, 134-7.
<i>PE</i>	Prices Edict composite version of tariff, <i>ibid.</i> 138-229.
<i>PEAez</i>	Prices Edict Aezani text in Crawford and Reynolds (1977, 1979).
<i>PEAph</i>	Prices Edict Aphrodisias text by J. Reynolds in Roueché (1989), 265-94.
<i>PLRE</i> i, ii	A. H. M. Jones, J. R. Martindale, and J. Morris, <i>The Prosopography of the Later Roman Empire: i, A.D. 260-395</i> (Cambridge, 1971); J. R. Martindale, <i>ii, A.D. 395-527</i> (Cambridge, 1980).
<i>P. Oxy.</i>	<i>The Oxyrhynchus Papyri</i>
<i>PSI</i>	<i>Papiri greci e latini (Pubblicazioni della Società Italiana per la ricerca dei Papiri greci e latini in Egitto)</i>
<i>RIC</i>	<i>Roman Imperial Coinage</i>
<i>Schol. Sin.</i>	<i>Scholia Sinaitica ad Ulpiani Libros ad Sabinum (FIRA² ii, 638-52 = IA ii, 466-84).</i>
Seeck, <i>RG</i>	O. Seeck, <i>Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n.Chr.: Vorarbeit</i>

SEG

SHA

Sirm.

Theod. II, *Nov.*Val. III, *Nov.*

zu einer Prosopographie der christlichen Kaiserzeit (Stuttgart, 1919).

*Supplementum Epigraphicum Graecum**Scriptores Historiae Augustae**Constitutiones Sirmondianae*, in *CTh* i/2, 907–21.Theodosius II, *Novellae*, in *CTh* ii.Valentinian III, *Novellae*, in *CTh* ii.

Full details of abbreviations and editions of papyri can be found in J. F. Oates *et al.*, *A Checklist of Editions of Greek and Latin Papyri, Ostraca, and Tablets*, 4th edn. (Bulletin of the American Society of Papyrologists, suppl. 7; New York, 1992).

For further details of late antique sources, see A. H. M. Jones, *The Later Roman Empire 284–602* (Oxford, 1964), iii, 394–406 (1464–76 in 1973 continuous pagination edn.).

In quotations of texts:

Round brackets () denote the expansion of abbreviations, or other explanatory material.

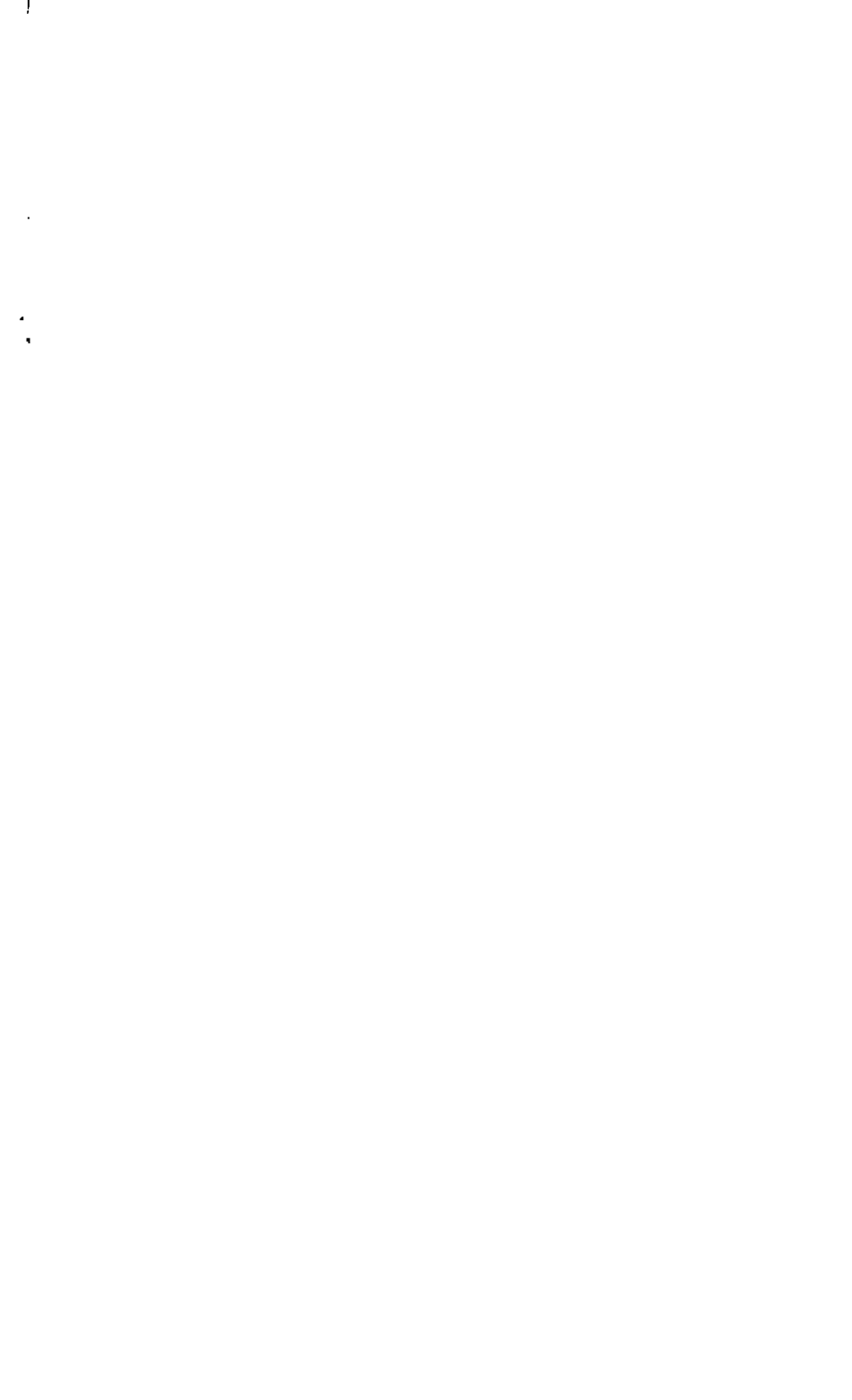
Square brackets [] denote damaged or lacunose passages, with conjectural restorations where appropriate.

Brace brackets { } denote letters or words present in the original, but considered superfluous or erroneous.

Diagonal brackets < > denote editorial additions for words or letters mistakenly omitted from the original.

The Roman Empire under the Tetrarchs
showing the dioceses and
the principal Tetrarchic residences





I

Introduction

I EMPERORS AND PRONOUNCEMENTS

The Tetrarchic age is a crucial period of change and transition in the history of the Roman empire, marking the conventional beginning of the late empire, when the reforms of Diocletian and Constantine established the pattern of government for three hundred years. But the years 284 to 324 also form a logical unit of political narrative, encompassing the genesis, existence, and demise of the tetrarchic experiment itself. The tetrarchy proper, of two Augusti and two Caesars, only functioned from 293 to 306 and ceased entirely once all the rulers held the full rank of Augustus by 310, but the period 305–24 represents the aftermath of Diocletian's abdication and the disintegration of his system. Only in 324 was the complex multiplicity of rulers, that he initiated, reduced to a single Christian dynasty.

The period is also well documented (even if lacking good narrative sources), especially in contrast to the dearth of the mid-third century. There is a notable richness in the variety and number of imperial texts, deriving from legal sources, Christian writers, inscriptions, and papyri. These supplement and complement one another. Thus the preponderance of private rescripts of Diocletian from the *Codex Iustinianus* is balanced against the imperial letters of Constantine from the *Codex Theodosianus*, while imperial acts of persecution against Christians can be set beside acts of toleration and favour.

Imperial pronouncements are central to imperial government. The making of speeches, the writing of letters, the ability to persuade and direct even at a distance are the essence of the imperial office.¹ It is no surprise that, when the panegyrist Mamertinus describes how the emperor Maximian discharges his functions as a ruler, he includes 'receiving countless messengers from all places, and sending out instructions to as many'.² Seventy years later, the emperor Julian, the last reigning

¹ Millar (1977: 203–12).

² *Pan. Lat.* 10 (2). 3. 4; cf. Aelius Aristides, *Or.* 26 (*To Rome*), 32–3 (Oliver 1956), where governors constantly send queries to the emperor and await directions in reply.

descendant of a tetrarchic dynasty, urged the citizens of Bostra to compose their differences in a manner that might also have been his own blueprint for government: 'One should persuade and instruct men by reason, not by blows or insults or bodily torment.'³

The imperial pronouncements are divided into three major (and one minor) categories, following the broad distinctions of form notable under the principate.⁴ In the order in which they are discussed in this book, they are as follows:

- (1) Private rescripts. These are answers to petitions from private citizens. They could be on all manner of topics, and might, for instance, simply grant a benefit, but in our material are mainly on points of private law, where the petitioner seeks a ruling on the law to be cited in a civil suit or less often a criminal case.
- (2) Imperial letters. Imperial letters or *epistulae* are normally directed to cities or high-ranking individuals in response to a petition, or to officials, following a *consultatio*, requesting guidance on matters of law or administration. Technically, such answers can be termed rescripts, precisely because they are answers. In our material it is letters to officials which predominate. A letter is usually distinguished in format by an initial greeting and final farewell.
- (3) Imperial edicts. Edicts are general pronouncements made by a magistrate and lack any specific addressee, though they may sometimes be directed at specific areas. In theory, they do not need to be legislative as opposed to simply informative, but in our material are invariably concerned with law or administration. However, as discussed in Chapter 7 Section iv, the distinction between letters and edicts becomes blurred as their genesis and content start to coincide.
- (4) Oral pronouncements. These represent decisions delivered by the emperor in person, whether judicial sentences in court or other public statements in extra-judicial hearings, such as in the presence of embassies.

Underlying most of the texts considered is the continuing tradition of Roman law. This is conventionally divided into phases. The high-water

while the emperor rules everything by letters (and does not need to travel around). The sedentary emperor in question is Antoninus Pius, but this stress upon long-distance communication is still relevant for the peripatetic tetrarchs.

³ Julian, *Ep.* 41 (Wright), 438B.

⁴ For the pronouncements and their context, see Millar (1977), ch. 5.

mark of classical Roman law was reached in the second and early third centuries AD, ending with the death of the last of the 'great jurists', Ulpian, in 223. The period after the Severi, and even up to Diocletian, can be termed 'epi-classical', when juristic writing was replaced by private rescripts as the major engine of legal development. From Constantine onwards law enters the post-classical era. In the past, the post-classical phase was considered a period of 'vulgarization', with Greek and other alien practices debasing the achievements of pure Roman law. Recently this view has been modified and allowance made for a greater degree of continuity, with law developing along classical lines. The classicism of Diocletian and his immediate predecessors has been convincingly demonstrated.⁵ It has also become clearer that Constantine can be approached in the same manner. The problem in the past was an excessive emphasis given to the change in style between Diocletian and Constantine, a result of the distortion in our surviving evidence. Thus the private rescripts of Diocletian were compared to the letters and edicts of Constantine, with little regard to differences in the nature of the documents as to their genesis, authorship, and audience.⁶ A more realistic picture emerges, once it is appreciated that the rhetoric considered appropriate to imperial letters and edicts displaces in the evidence the briefer and more functional style of the private rescripts (although rescripts too can become rhetorical). In the letters and edicts, the tendency is for the underlying law and its terminology to be obscured by the language, but not destroyed. Recent studies have shown how changes under Constantine are not a violent wrench away from classical principles, but a development originating from them.⁷

The increase in the use of rhetorical devices in major imperial texts is a feature of the period, although it was already developing under the principate.⁸ This rhetoric at its most dramatic reveals the apologetic preamble in all its glory with the elaborate complexities of the Prices Edict. Many lay upon Diocletian, therefore, the responsibility for the development of late imperial rhetoric.⁹

⁵ For Diocletian see the major study of Tellegen-Couperus (1982; also Tellegen-Couperus 1980 and Herrmann 1980). For Diocletian's predecessors, see Watson (1974) (Probus) and (1973) (Carus, Carinus, and Numerian).

⁶ See Vernay (1913); by contrast, Volterra (1959) stresses the diversity of the texts involved.

⁷ Thus Simon (1977), Voss (1982), and Honoré (1989b).

⁸ As concluded by Benner (1975).

⁹ e.g. MacMullen (1962). This is too simplistic. As discussed in Ch. 4, Diocletian's lawyer officials represent both highly conservative legal classicism and the newer tendency to moralizing rhetoric.

These two aspects, the survival of classical law and the efflorescence of imperial rhetoric, show how the tetrarchic period plays Janus at the frontier conventionally drawn between High and Low Empire. The nature of the evidence, however, often means that scholars may consider only one or other outlook. The Justinian Code rescripts look back to the Severan jurists, while the Constantine of the Theodosian Code is a starting-point (as indeed Theodosius II intended) for late Roman imperial (Christian) legislation. Thus a study such as that of Honoré in *Emperors and Lawyers* is confined by the evidence of the rescripts in the Justinian Code to the period 193–305. Conversely, discussions of late Roman legislation in the Theodosian Code assume a system in which the quaestor is pivotal in the production of laws,¹⁰ a system which not only does not predate the Theodosian Code, but was not in place till rather later in the fourth century.

Both bodies of material must be included for a balanced survey of imperial pronouncements. An entire catalogue or palingenesia of this material has not been attempted here, but two chronological *catalogues raisonnés* are included.¹¹ These cover imperial letters from 284 to 313 (Chapter 6, plus Appendix D in more summary form for 314–24) and imperial edicts from 284 to 324 (Chapter 7). This manner of presentation enables texts from varied sources to be brought together and gives a clear idea of the range of imperial documents that were produced.

An important aspect of the period is an apparent extension in the ambitions of government, as opposed to the more purely reactive role of the emperor under the principate.¹² This can be seen, for instance, in the presence, for the only time in imperial history, of multiple copies of general pronouncements in Latin set up in durable form throughout the east.¹³ Two themes should therefore be kept in mind. The first

¹⁰ See e.g. Voss (1982). Honoré's work on the quaestorian authorship of texts has not yet dealt with anything before the reign of Valentinian I.

¹¹ Honoré, *EL*² includes a computer disc with a palingenesia of imperial rescripts for 193–305. A complete palingenesia of late Roman imperial legislation is planned by the Accademia Romanistica Costantiniana. Several preparatory vols. have already appeared under its auspices (e.g. Bruno Siola *et al.* 1985, Seeck 1889 (repr. 1983), Silli 1987, Sargenti and Bruno Siola 1991 and Pergami 1993). For a survey of recent work, see Coriat (1989).*

¹² As, of course, documented in the classic work of Millar (1977 and 1992; cf. 1990).

¹³ Of earlier examples, seven Latin copies and three Greek translations of a rescript of Severus and Caracalla are known from the east, but these represent initiative from interested parties, not official action (for details with full bibliography, see C. P. Jones 1984). Note also the recently discovered *senatusconsultum de Pisone* from southern Spain found in one complete, one near complete, and four fragmentary copies (Eck 1993, citing other multiple examples).

is the emperor as respondent. This is explored by an examination of the nature of rescripts and the working of the rescript system, especially through a study of the petitioners and their petitions. But it is also important to assess in the surviving letters the extent to which traditional rescripts sent in reply to *consultationes* can be detected as opposed to the newer phenomenon of unsolicited correspondence from emperors. Both private and public rescripts, therefore, can be used to examine the roles of the emperor as reactor or initiator. The second theme is the effectiveness of government in disseminating and enforcing the provisions of the documents it produced. This is illustrated in particular by an exploration of the role played by the governor and other officials in relation to private rescripts and edicts, but also by considering the fate of the most far-reaching projects of the period such as the Prices Edict and the persecutions of the Christian church. Did the machinery of government match its ambitions?

II THE RISE AND FALL OF THE TETRARCHIC SYSTEM 284-324

The large number of co-rulers during this period makes a brief narrative desirable, to clarify the chronological and geographical complexity of the emperors' reigns.¹⁴

After the death of Numerian, Diocletian was acclaimed emperor at Nicomedia in November 284. The following spring he advanced into the Balkans to confront Numerian's brother Carinus, ruler in the west. Carinus was assassinated during the battle, and Diocletian was left as sole ruler of the empire. Within a matter of months, he appointed a trusted companion, Maximian, to rule the west, first as Caesar and then in 286 as Augustus.¹⁵ From 286 to 296, however, Britain was ruled by a usurper (first Carausius, then Allectus).

In March 293, the first tetrarchy was formed, when two Caesars were appointed, Galerius to serve in the east under Diocletian and Constantius in Gaul under Maximian. The succeeding years were filled with administrative reform and military success. The coinage and tax system was overhauled, legal codes published, and the dioceses created. Constantius

¹⁴ The best and most up-to-date account of the whole period 284-324 is still Barnes, *CE* 3-77 (supported by other detailed work in *NE*, esp. chs. 1, 2, 4, 5; cf. Kienast 1990: 260-302). See also S. Williams (1985).

¹⁵ For problems over the chronology of Maximian's elevation, see Ch. 11 Sect. iiic.

reconquered Britain, Maximian campaigned in Spain and Africa,¹⁶ Diocletian suppressed a revolt in Egypt, and Galerius won a crushing victory over the king of Persia, gaining territory in Mesopotamia and beyond the Tigris, and establishing peace in the east for the next forty years.

In 303, the 'Great Persecution' of the Christians was initiated by Diocletian and Galerius. This was hardly enforced in Gaul and Britain (the territory of Constantius) and in Italy and Africa had ceased by 306. In the east, however, it outlasted the reign of Diocletian and continued with varying degrees of energy until 311, followed by a brief revival in 312.

In November 303, Diocletian paid his only visit to Rome to celebrate his *vicennalia* and in May 305, Diocletian and Maximian abdicated. Constantius (as senior) and Galerius became Augusti, with Constantius in control of Gaul, Britain, and Spain, and Galerius ruling the Balkans and Asia Minor. The tetrarchy continued with the appointment of two new Caesars, Severus to rule Italy and Africa and Maximinus to rule Oriens.

In July 306, Constantius died, and his son Constantine was proclaimed Augustus in York and succeeded to his territories. Galerius (now senior) accepted this with bad grace, but granted Constantine the rank of Caesar, while Severus was promoted to become Augustus. Thus a third tetrarchy came into being. This was short-lived. Resentment at the imposition of taxation led to a revolt at Rome in October 306 and Maximian's son Maxentius was made ruler there. Galerius did not recognize this second unwelcome elevation, but sent Severus to unseat Maxentius, who recalled his father Maximian from retirement to aid him. Thus, Severus was defeated, deposed, and soon killed. In the summer of 307, Galerius himself entered Italy to suppress Maxentius, but his efforts came to nothing and he only extricated himself with difficulty. Soon afterwards (April 308), Maximian quarrelled with Maxentius and fled to Constantine (now his son-in-law) in Gaul. In addition, Alexander, vicar of Africa, headed a rebellion there against Maxentius in 308/9, which was savagely repressed.¹⁷

In an attempt to reassert control over the situation, Galerius convened an imperial conference at Carnuntum in November 308, where,

¹⁶ For Maximian's campaigns, see Arce 1982 (Spain) and Rebuffat 1992 (Africa). The list of probable tetrarchic capitals has been lengthened recently by the plausible identification of a palace at Cordoba as Maximian's Spanish residence (Haley 1994, Hidalgo Prieto and Ventura Villanueva 1994).*

¹⁷ The detailed timing and length of the revolt are uncertain. For a brief discussion, see Barnes, *NE* 14.

in the presence of the retired Augusti, Diocletian and Maximian (the latter having been persuaded to abdicate a second time), he appointed Licinius directly to the rank of Augustus. The lesser rank of Caesar now seemed unattractive to those who still held it, and by 310 the original pattern of the tetrarchy was dead, with all the rulers now styled Augusti. It seems to have been Galerius' plan that Licinius should drive Maxentius out of Italy and replace him there. This Licinius never did. Instead, when Galerius died in May 311, after decreeing toleration for the Christians, Licinius took over all his European territory, while Maximinus in the east took his Asian territory (and soon renewed the persecution), the two of them regarding each other with suspicion across the Bosphorus.

Meanwhile, Maximian had unsuccessfully attempted a coup against Constantine and was forced to suicide at Marseilles in 310. In October 312, Constantine defeated Maxentius, occupied Italy, and was granted rank as senior emperor by the Senate in Rome. Licinius then cemented an alliance with Constantine by marrying the latter's sister at Milan in February 313. When Maximinus proceeded to invade Licinius' dominions, Licinius hurried east and defeated him near Adrianople in April 313. Maximinus fled east to Tarsus, where, faced by final disaster, he decreed an end to the persecution, before killing himself (c. July 313). Also by this time, Diocletian was dead (perhaps in December 312), having lived to see the ruin of the system he had attempted to establish.¹⁸

Relations between the two remaining emperors were soon marked by conspiracy or suspicion of conspiracy. In 315, a son was born to Licinius, providing an heir for the east. In October 316 Constantine attacked and defeated Licinius and this led to a negotiated settlement.¹⁹ Licinius lost nearly all his European territory, while his son, Licinius Junior, and Constantine's two sons, Crispus and Constantine II, were proclaimed Caesars in March 317. Crispus was subsequently sent to administer Gaul. Relations deteriorated again after 321, when Licinius refused to recognize Constantine's consuls. Affairs reached fever pitch when Constantine violated Licinius' territory while dealing with a barbarian incursion in 323.

¹⁸ The date of the death of Diocletian is uncertain; it occurred after that of Galerius and before that of Maximinus. Dec. 311 and Dec. 312 are the most likely dates (see Barnes 1973a: 32-5 and Mitchell 1988: 123).

¹⁹ Seeck (RG 163) followed the view that placed the first civil war in 314. The later date is now firmly established (Barnes 1973a: 36-8, following work by Bruun 1953 and 1961, and Habicht 1958). For a recent dissentient view, splitting the war between 314 and 316, see DiMaio *et al.* (1990).



Since Constantine was openly and clearly Christian, Licinius may have regarded Christians as potential traitors and he now started to take measures against them, though these never amounted to a full persecution. It was enough, however, to provide Constantine with the role of crusading liberator and he defeated Licinius in July 324 at Adrianople and again at Chrysopolis opposite Byzantium in September. Licinius surrendered, being promised his life, and was sent into custody at Thessalonica. The following spring, from real or fabricated fears of conspiracy, he was executed. Before this, in November 324, Constantine, now sole Augustus, appointed his third son Constantius (II) as Caesar and laid the foundations of his new city of Constantinople. The aftermath attending the decay of Diocletian's tetrarchic experiment was over.

III SOURCES

The sources for legislation and other imperial documents can be divided into three main categories. The most important are the legal sources, comprising the two surviving codes and a number of lesser legal works. In the second category are the literary sources, or more particularly, Christian writings, in which the direct citation of imperial pronouncements provides crucial ammunition in the Christian discourse against pagans or heretics and schismatics. Finally, there are documentary sources consisting of inscriptions and papyri.

This section gives an account of the legal sources and some of the problems associated with them, with briefer surveys of the literary and documentary evidence.

(a) Legal Sources

The two major sources of imperial documents are the *Codices Theodosianus* and *Iustinianus*. The former furnishes some two hundred constitutions of Constantine (mostly letters) and the latter about 1,200 constitutions of Diocletian (mainly private rescripts), plus a scattering of later items not in *CTh* up to 324.

The commission to compile the Justinian Code was set up in 528 and

1 (*Opposite*) *P. Oxy.* 1814^v (c.530). List of rubrics and constitutions from the first edition of the *Codex Iustinianus*, including fragments of the earliest entries assigned to the first tetrarchy (*CJ* 1. 18)

the code was published in 529.²⁰ Its aim was to collect in one volume the imperial constitutions from the three earlier codes (Gregorian, Hermogenian, and Theodosian), plus the post-Theodosian novels and the laws of Justinian himself. The commissioners were empowered to divide the constitutions among appropriate titles and even to alter their texts as they saw fit. In 534, a second edition of *CJ* appeared, and it is this edition which we possess.²¹ Its additional material consisted of a mass of legislation enacted by Justinian since 529. It is not clear what was now excluded, though we do know that the Law of Citations (on the validity of the juristic writings), dating to 426 and preserved in *CTh*, was dropped from the new edition.²² It had become redundant, having been superseded by the *Digest*, published in 533.

Of the three earlier codes, the Gregorian and Hermogenian (both Diocletianic) do not survive. Their nature and purpose are fully discussed in the next chapter. The Theodosian Code does survive nearly intact. It was originally planned by Theodosius II in 429²³ and was finally promulgated in 438.²⁴ The aim was to include imperial constitutions from the time of Constantine up to its own day.

In addition to the codes, there survive other legal works which contain tetrarchic material, deriving either directly from *CG* and *CH* or from sources independent of the codes. They are as follows:

(1) *Fragmenta Vaticana (FV)*.²⁵ This work examines particular topics (e.g. the *lex Cincia de Donationibus*) and consists mainly of citations from the jurists and imperial constitutions. In its original form it appears to have been compiled before the fall of Licinius, and it only contains two texts that can be certainly dated after 324.²⁶ Many of its constitutions derive from the west (providing most of those rescripts attributable to Maximian) and, although it may have drawn on *CG* and *CH*, only a handful of marginal ascriptions suggest this.

²⁰ *C. Haec* (Feb. 528) and *C. Summa* (Apr. 529), in *CJ* (Krüger), 1-3.

²¹ *C. Cordi* (Nov. 534), in *CJ* (Krüger), 4.

²² *P. Oxy.* 1814 = Amelotti and Migliardi Zingale (1985: 21-2) (see Pl. 1) preserves a list of rubrics and headings from Bk. 1 of the first edn., which includes what must be the Law of Citations (*CTh* 1. 4. 3) at line 17. For the only other known fragment of the first edn., see *ibid.* 25-6 (Bk. 12. 59-62).

²³ *CTh* 1. 1. 5 (first commission, Mar. 429); *CTh* 1. 1. 6 (second commission, Dec. 435). In effect the first commission collected the material and the second commission compiled/edited it into the code (see J. F. Matthews 1993: 22-30).

²⁴ Theod. II, Nov. 1 (Feb. 438) and *Gesta Senatus* (438) (*CTh* (Mommson) i/2, 1-4). See also *Constitutio de Constitutionariis* (Dec. 443) (*CTh* (Mommson) i/2, 4).

²⁵ See Gaudemet (1979: 75-7), and Liebs (1987: 150-62; 1989: 64-5).

²⁶ *FV* 37 (369) and 248 (330). On the problematical date of *FV* 35, see letter catalogue, no. 70.

(2) *Mosaicarum et Romanarum Legum Collatio* (Coll.).²⁷ This work sets out biblical and Roman rulings on various topics (e.g. incest and homosexuality). Date and authorship are disputed, though it should be before CTh.²⁸ It records positive attributions to CG and CH.

(3) *Consultatio veteris cuiusdam iurisconsulti* (Cons.). This work represents the imaginary answers of a jurist to various questions. It cites texts from CG, CH, and CTh. It is usually dated to the later fifth/sixth century in Gaul.²⁹

(4) The *Lex Romana Visigothorum* or Breviary of Alaric was issued by the Visigothic king Alaric II in 506.³⁰ Its major component was an abbreviation with commentary of the Theodosian Code, along with selected novels of Theodosius II, Valentinian III, Marcian, Majorian, and Severus, but there were also extracts from the juristic writings of Gaius, Paul, and Papinian. Of most importance for Diocletianic material, however, are the two epitomes of the Gregorian and Hermogenian Codes (CGV and CHV), plus an appendix containing some further Gregorian Code constitutions (ALRW).

Further information, although no texts, can be gleaned from a variety of other sources including the *Scholia Sinaitica*, *Lex Romana Burgundionum*, and *Leges Saeculares* (Syro-Roman Law Book), all reproduced in FIRA² ii.

Two questions need to be addressed: how representative are the constitutions that survive, and how accurate is the transmitted text?

The survival of constitutions is clearly extremely uneven, and represents both chance and choice. The Diocletianic codes consisted almost entirely of private rescripts, many selected within a few years of being issued, though in an extremely uneven fashion. The Theodosian Code deliberately set out to gather only *leges generales*, and while some extreme specificity did not exclude a law from the definition of

²⁷ See Gaudemet (1979: 96–8) and Liebs (1987: 162–74).

²⁸ Note that the law of Theodosius I against male prostitutes, which appears at CTh 9. 6 (posted Forum of Trajan, Aug. 390), is given in a full version with different date and place of posting within Rome at Coll. 5. 3 (posted in atrio Minervae, May 390). The Coll. text is thus independent of CTh. See the discussions in Volterra (1984; 1987). The most recent full survey of the dating problem is Barone-Adesi (1992), whose final view favours initial composition in the early 4th cent. and one or more revisions in the late 4th and early 5th cents.; Schrage (1993) argues for c.426.

²⁹ The earliest proposed date would put it shortly before the death in 450 of Theodosius II, who appears to be referred to as still living at Cons. 7. 3 (Liebs 1987: 142 n. 52).

³⁰ For the promulgation, see the *communitorium* of Alaric, Feb. 506, in CTh (Mommson), iv, 1 pp. xxxiii–xxxiv.

generalitas, there are no certain private rescripts among them.³¹ The sources upon which the commissioners drew are unknown. It is not even certain that there was any central archive that could be tapped, so that only the more recent laws may have derived from copies at Constantinople. The great number of laws addressed to officials in Rome and Africa (often with dates of posting there) makes it highly probable that they originated in local official or private archives, which were examined by the commission *in situ* at Rome and Carthage.³²

The constitutions of Constantine must have been subject to the most uncertain survival, being the most distant in time from the compilation. So many laws refer to previous enactments or claim to be reiterations of laws which do not survive (or are only dubiously identified with what does survive), that the amount of missing legislation must be considerable.³³ This makes it extremely difficult to be certain that any text (of whatever nature) is *introducing* a change in the law, as opposed to providing the first documented example of such a provision. Thus Sirmondian 4, which is concerned with the Jews, states that it is a re-enactment, which would not be clear from the CTh excerpts that survive.³⁴ In another case, Sozomen, writing in the reign of Theodosius II, mentions three extant laws of Constantine on manumission in church.³⁵ Only one of these survives in Theodosius' Code,³⁶ while a second (earlier) text occurs in *CJ*.³⁷ The first and earliest is otherwise unattested. Care is therefore needed in remembering that what survives, both within and without the codes, is neither full nor necessarily representative.

³¹ *CTh* 1. 1. 5 (429) speaks of collecting those laws *edictorum viribus aut sacra generalitate subnixas*. *CTh* 1. 1. 6 (435) refers to *omnes edictales generalesque constitutiones vel in certis provinciis seu locis valere aut proponi iussae*. Even if only directed to one place on a limited topic, a law might be considered 'general' if it could be taken as precedential and relevant to other cases or enshrining general principles for the future. Such precedential force had already been taken away from private rescripts in the late 4th cent. (*CTh* 1. 2. 11). *Generalitas* is defined at *CJ* 1. 14. 3, on which passage and the whole question of *generalitas*, plus examples of some of the odder specific *CTh* laws, see J. F. Matthews (1993: 25–9).

³² For discussion of the compilation and its archive sources, see the contrasting views of Sirks (1993) (favouring a central imperial register) and J. F. Matthews (1993: 31–43) (suggesting use of various sources, including records in Rome and Africa).

³³ For a study of legislative repetition illustrated with copious bar charts, see Gaudemet (1972). I am not sure that comparisons by reign are useful, since the surviving constitutions are neither a random nor a representative selection of the original laws. This is nevertheless an important topic, since the very grandiloquent repetitiveness of the laws is an indication of government weakness in the face of both the ignorance of and ignoring of legislation.

³⁴ *CTh* 16. 8. 5, 16. 9. 1.

³⁵ Sozomen, *HE* 1. 9. 6. See Harries (1986: 48).

³⁶ *CTh* 4. 7. 1.

³⁷ *CJ* 1. 13. 1. This is restored by Krüger into his reconstruction at *CTh* 4. 8. 1a.

Dating presents considerable problems. Most constitutions carry an inscription with the names of the emperor(s) and the recipient(s), and a subscription with some or all of the place, day, and year of issue, receipt, or posting. Any of these items may be inconsistent with the others, necessitating some emendation. Corruption of consular years is especially likely, with so many imperial consulates and so many emperors with similar names,³⁸ although certain months are also easily confused.³⁹ The two most comprehensive attempts to reduce the chronology to reasonable order are those of Mommsen, for the reign of Diocletian,⁴⁰ and of Seeck in his *Regesten*, for Constantine onwards. However, while it is difficult not to rely on their work, time has sometimes superseded their results. Thus, Seeck accepted the date of the first civil war between Constantine and Licinius as 314 and emended two texts, that placed Constantine at Trier in October and December of that year, to the previous year.⁴¹ Since the war is now generally dated to 316, the emendations are unnecessary.⁴² However, the situation also occurs in reverse. A letter of 315 from Thessalonica to Rome was left unchanged by Seeck as compatible with Constantine's itinerary.⁴³ The later date for the civil war makes this impossible, as Thessalonica was still under the rule of Licinius, and the date must be altered.⁴⁴ It is clear that the most incontrovertible parts of a constitution will necessitate the alteration of the other parts, however unlikely such emendation might appear. Further, in those constitutions where only some parts of the diplomatics survive, corruption is more difficult to detect, in the absence of other elements to act as a control. Despite this, I prefer, where possible, to leave dates and places unaltered or only minimally altered. The fact that almost any sort of corruption *can* take place does not mean that this *has* happened.

What of the textual content? It is clear that many of the constitutions have passed through a great number of hands. For instance, texts in *CG* and *CH* were first issued, then collected and compiled into the codes

³⁸ Thus Maximinus and two Maximians (also Maxentius); two Constantii (plus one praetorian prefect of that name), two Constantines, and one Constans; two Licinii. In addition, many non-imperial consuls have similar names. The confusion of imperial names (and events) also occurs in Byzantine chronicles (e.g. Malalas 12. 311–15).

³⁹ Thus *Jan.*, *Jun.*, and *Jul.*; *Apr.* and *Aug.*; *Mar.* and *Mai.*

⁴⁰ Mommsen (1860: 421–46) = *Juristische Schriften*, in (*Gesammelte Schriften*, ii; 1905), 267–90.

⁴¹ *CTh* 1. 2. 1. 6. 35. 1 (Seeck, *RG* 161–2).

⁴² See also Delmaire (1992) on *CTh* 11. 29. 1 and 11. 30. 1, who argues for an issue date of Dec. 314 at Trier.

⁴³ *CTh* 8. 7. 1. See Seeck, *RG* 54. 163.

⁴⁴ Emended to 324 by *PLRE* i: 371 (Fortunatus 6).

and those codes copied (and interpolated?) down to the reign of Justinian. They were then recompiled and re-edited into the first edition of *CJ*, and again (though perhaps with little further tampering) into the second edition. This was then entrusted to the mercies of the manuscript tradition.

Of all the phases in this transmission, it is the actions of Justinian's commissions with their wide editorial powers in relation to both the Code and the Digest that have most exercised scholars.⁴⁵ It is clear that changes were indeed made to the texts compiled and it is important to assess the extent of alteration. This problem was addressed in the earlier part of this century in the form of a continual *Interpolationenjagd*. This tended to make a presumption of interpolation, and some texts were so dissected that it was hard to see what was left of the original once the interpolations had been discarded.⁴⁶ In recent years, however, jurists have attempted to place the study of interpolations on a more systematic footing.⁴⁷ Thus, interpolations may simply repeat or clarify the original text, perhaps explaining or eliminating anachronistic terms. Where more substantial changes were introduced, the editors sought to preserve as much of the original as possible, and any additions made may themselves have drawn on earlier writings. Here, too, as a matter of principle, the texts should be allowed to speak for themselves and be interpreted as they stand, before recourse is had to interpolation to explain apparent difficulties.

Unlike the Digest, the level of alteration in *CJ* material can be assessed by comparison with other versions of the same texts. This can be done with ease for the Constantinian material, since *CJ* incorporates so much of the independently surviving *CTh*; the task is made easier with the use of Mommsen's edition of *CTh*, which clearly notes all divergences in the *CJ* versions. Texts are often taken over with little

⁴⁵ Justinian's instructions to the first code commission show how wide were the editorial powers: *Quibus specialiter permisimus resecatis tam supervacuis, quantum ad legum soliditatem pertinet, praefationibus quam similibus et contrariis, praeterquam si iuris aliqua divisione adiuvantur, illis etiam, quae in desuetudinem abierunt, certas et brevi sermone conscriptas ex isdem tribus codicibus, novellis etiam constitutionibus leges componere et congruis subdere titulis, adicientes quidem et detrahentes, immo et mutantes verba earum, ubi hoc rei commoditas exigebat, colligentes vero in unam sanctionem, quae in variis constitutionibus dispersa sunt, et sensum earum clariorum efficientes . . .* (*C. Haec.* 2). The exercise of most of these powers is shown in the examples given below. See most recently on the Justinianic commission, Watson (1994).

⁴⁶ Note e.g. Albertario (1934) on *CJ* 8. 47. 5. For a lengthy bibliography of interpolations suspected in *CJ* up to 1936, see Broggin (1969). See also Solazzi (1957; 1958).

⁴⁷ For the Digest, see Honoré (1981; 1983; 1984b; 1986b), and Johnston (1989).

alteration beyond general shortening.⁴⁸ Some interesting examples from our material show the variety of more complex results that the editing produced. In Constantine's meeting with the veterans, the plural *dei* of the *CTh* text is emended to the suitably Christian *deus* by *CJ*.⁴⁹ *CJ* 9. 18. 3 reproduces *CTh* 9. 16. 1, omitting one clause and adapting into its opening sentence a phrase from *CTh* 9. 16. 2, a constitution which is not otherwise reproduced in *CJ*. Rather more drastically, *CTh* 9. 42. 1 is divided into two. The first part is reproduced with substantial additions at *CJ* 5. 16. 24, while the second is added on to *CTh* 9. 42. 15 to form a composite text attributed to Arcadius and Honorius at *CJ* 9. 49. 9.⁵⁰

In one case, the textual tradition can be traced further. The *edictum de Accusationibus* survives nearly complete on contemporary inscriptions. *CTh* 9. 5. 1 takes over two paragraphs from different parts of the edict, with some minor variations of wording (though with one important change in substance).⁵¹ *CJ* 9. 8. 3 reproduces the first *CTh* paragraph exactly, but drops the second. This is an important example, since it serves as a reminder that *CTh* does not itself preserve originals intact, although there are few control texts to demonstrate this.⁵² *CTh*, in common with some of the lesser legal sources, does, however, frequently signal that a text is an excerpt from a longer constitution, by such opening or concluding phrases as *post alia* or *et cetera*.⁵³

The Diocletianic texts from *CJ* can be correlated with a handful of constitutions from the lesser legal sources, which appear, for the most part, to give texts closer to the originals, indeed sometimes to provide what is clearly the full version. As above, some illustrative examples are given here of different types of *CJ* alterations to material from the Diocletianic codes.

(1) *Amalgamation*. At least two tetrarchic constitutions from *FV* appear subsumed in other *CJ* texts.⁵⁴

⁴⁸ e.g. *CTh* 16. 8. 1 is reproduced word for word at *CJ* 1. 9. 3, with the final sentence excised.

⁴⁹ *CTh* 7. 20. 2 = *CJ* 12. 46. 1.

⁵⁰ Note also the explanatory interpolation that glosses the term *Caesariani* with the phrase *id est catholiciani*.

⁵¹ See further the edict catalogue, no. 35.

⁵² For Constantine, the most important control texts are *FV* 35 (see letter catalogue, no. 70), *FV* 249 (see edict catalogue, no. 54), and *Sirm.* 4. The editorial powers of the Theodosian commission in 435 (greater than those originally granted in 429) are described as follows: *adgressuris hoc opus et demendi supervacanea verba et adiciendi necessaria et demutandi ambigua et emendandi incongrua tribuimus potestatem* . . . (*CTh* 1. 1. 6. 1). These powers are similar to, but not as extensive as, those of the Justinian commission. For a generally positive view of the authenticity of *CTh* texts, see Honoré (1986a: 156–61).

⁵³ See edict catalogue, no. 32.

⁵⁴ *FV* 42 (Diocletian at Sirmium, 293) appears at *CJ* 3. 33. 3 (Caracalla, 213); *FV* 315

(2) *Abbreviation.* The most extreme example of abbreviation is provided by *CJ* 5. 4. 17, which preserves only the list of forbidden relationships from the lengthy Damascus incest edict.⁵⁵ However, it has also been expanded to include a brother's daughter and granddaughter, thus making the list comprehensive for the time of Justinian, as well as removing the necessity of retaining in *CJ* Constantius II's edict, which had banned the additional categories in 342.⁵⁶ In other instances, only shorter extraneous sentences are excised.⁵⁷ Thus Septimius Sabinianus divided his goods into three, retaining one part, giving one to a son *in potestate* and the final share to an emancipated son.⁵⁸ The code omits the reference to the donation to the emancipated son and the last four lines that deal with this. Instead it adds only a single brief statement about emancipated donation, either as a summary of what it has omitted, or lifted from the missing part of the rescript, which is not complete even in *Consultatio*.

(3) *Emendation and interpolation.* When Justinian's commissioners interfered more directly with the textual content,⁵⁹ the original rescript is not obliterated, as can be seen from some of the examples already given.⁶⁰ However, one cautionary example must be discussed. A rescript of 286 reads as follows:

Aurelio Carrenoni. Si <praediorum> stipendiariorum proprietatem dono dedisti ita, ut post mortem eius qui accepit ad te rediret, donatio inrita est, cum ad te<mpus> proprietas transferri nequiverit.

(Maximian at Reims, 291) appears at *CJ* 3. 32. 15 (293). In addition, since *FV* 22 only appears to cover the *principium* of its *CJ* parallel (4. 46. 2), the rest of the *CJ* text may represent a separate rescript (as argued by Gradenwitz 1925a).

⁵⁵ *Coll.* 6. 4. ⁵⁶ *CTh* 3. 12. 1.

⁵⁷ e.g. *CJ* 3. 38. 3 lacks the initial sentence from *Cons.* 2. 6; the loss of the reference to the governor necessitates the inversion of the final verb into the passive (cf. *FV* 280 and *CJ* 3. 29. 7). The rescript has been considerably altered, but mostly by the rearrangement of the original vocabulary. The final line is retained intact.

⁵⁸ *Cons.* 6. 10. This text is abbreviated at the end, as shown by the concluding phrase *et reliqua*.

⁵⁹ It may sometimes be possible to detect the hand of Tribonian at work; e.g. the use of *paulo* at *CJ* 4. 44. 8 (Honoré 1978: 213–14).

⁶⁰ Note, however, *FV* 326 and *CJ* 3. 6. 2, where the Justinian passage seems far removed from the original text, though the two should perhaps be conjoined rather than seen as versions of the same text. Volterra (1973c) argues that what the commission has done here is to turn a concrete case into a general normative ruling. In another case, alteration of the original text has rendered the understanding of a pair of rescripts obscure beyond recovery (Rodger 1972: 11–19 on *CJ* 3. 34. 8–9). Obscurity, however, is more often caused by simple omission than emendation.

To Aurelius Carrenon. If you have given ownership of stipendiary <estates> as a gift, on the condition that on the death of the donee they return to you, the donation is invalid, since it is impossible to make a transfer of ownership for a limited period. (*FV* 283)

The parallel Justinian version is as follows:

Zenoni. Si praediorum proprietatem dono dedisti ita, ut post mortem eius qui accepit ad te rediret, donatio valet, cum etiam ad tempus certum vel incertum ea fieri potest, lege scilicet quae ei imposita est conservanda.

To Zeno. If you have given ownership of estates as a gift, on the condition that on the death of the donee they return to you, the donation is valid, since it can also be made for a specified or unspecified period of time, that is to say the terms imposed on him (the donee) must be kept. (*CJ* 8. 54. 2)

This Justinian version differs in a number of ways. Its recipient is called Zeno. The *stipendiarius* is dropped as anachronistic.⁶¹ But these are minor and unimportant variations. The crucial legal point is inverted. Thus the original rescript declared temporary donations invalid, while the code text allows them legal force. Why, although it was certainly within the power of the commission to do so, was it necessary to alter the rescript to produce the opposite meaning from the original? Justinian's opinion on provisions *ad tempus* is clear:

Illud, quod de legatis vel fideicommissis temporalibus utpote irritis a legum conditoribus definitum est, emendare prospeximus sancientes et talem legatorum vel fideicommissorum speciem valere et firmitatem habere. Cum enim iam constitutum est fieri posse temporales donationes et contractus, consequens est etiam legata vel fideicommissa, quae ad tempus relicta sunt, ad eandem similitudinem confirmari.

The founders of the law laid down that temporary bequests or trusts should be invalid. This we have had the foresight to change, with the sanction that this class of bequests or trusts should be valid and have legal force. For since it has already been decreed that donations and contracts can be temporary, it follows that bequests or trusts also, which are left for a limited period, should by analogy be confirmed.⁶²

The emperor thus extended to testamentary dispositions a legal change already enacted (*iam constitutum est*) in regard to donations. The

⁶¹ Ironically, the *praediorum* is normally restored in *FV* before *stipendiarius* from the *CJ* text. For another excised anachronism, see *FV* 315 and *CJ* 3. 32. 15, where the term *tributarius* is omitted from the code version.

⁶² *CJ* 6. 37. 26 (532). The true author of this constitution was probably Tribonian as quaestor (Honoré 1978: 109).

reference to *legum conditores* suggests that Justinian was remodelling this whole area of law away from classical practice, so that the earlier change should also be his. Why, therefore, did the commission not include that law, which must surely have been available, and instead invert a Diocletianic rescript?⁶³ It is of course possible that the citation of the earlier legislation refers to the act of publishing the first edition of *CJ* (with its emended Diocletianic text), which took place only three years before this constitution. Yet surely this cannot have been the intended manner of introducing the legal change. Another explanation is that temporary donations were known to have been granted validity at some time between Diocletian and Justinian, but that any constitutions introducing or reiterating this rule could not be traced, which is quite possible, given that the imperial archives were far from comprehensive. Alternatively, the Diocletianic text (probably from the Gregorian Code) may have been tampered with already, before Justinian's commission set to work on it.⁶⁴ Whatever the answer to this question, this rescript provides a useful reminder of the possible fate awaiting the original wording.

I should like to end this examination of the legal sources with a discussion of one of the most interesting and important private rescripts in our material. This is *FV* 282, which is cited with some frequency in the succeeding pages. It shows a woman quite boldly petitioning the emperor; indeed, it is her second petition since she was dissatisfied with the first. She is not petitioning directly on her own behalf, but for her son, who has wasted his property through excessive donation. The rescript was posted in Milan. Not only does this illustrate the rescriptal competence of Maximian, but, since it dates to February 286, it becomes part of the controversy over the chronology of Maximian's elevation and the powers of the Caesars. Finally, it shows *CJ* editing in action. The first two sentences do not appear in *CJ*. The third appears under one *CJ* title, and the final (with an additional sentence not in *FV*) appears under another.⁶⁵ This shows the real loss caused by later editing from the historian's point of view. Account must be taken of minor

⁶³ This is precisely the argument used by J. A. C. Thomas (1962: 421) against the view that the presence of a twenty-year prescription in *CJ* 9. 22. 12 is a result of Justinianic interpolation.

⁶⁴ Solazzi (1939) suggests that differences might arise if the compilers of *CJ* and other legal works used copies of *CH* (or presumably *CG*) that had been differently glossed.

⁶⁵ *FV* 282: *Idem Calpurniae Aristaenetae. Quoniam non contenta rescripto, quod ad primas preces acceperas, iterato supplicare voluisti, ex iure rescriptum reportabis.*

verbal variations and major emendations. But it is the removal of the extraneous information, as strictly irrelevant to the legal core of a constitution, that hinders the understanding of both text and context. Many of the problems in dealing with the rescripts derive from what is not there, not from what is.

In conclusion, the transmitted texts are seldom identical with what the imperial chancery originally issued, yet the extent of alteration, although sometimes drastic, is not usually so. Abbreviation is the most common fate of constitutions in the legal sources. And I certainly do not take the attitude that any difficulties of interpretation should be automatically explained away as corruption and interpolation.

(b) *Literary sources*

Narrative sources for the tetrarchic period are poor, represented by mid-fourth-century breviarists such as Eutropius and Aurelius Victor. The best and fullest sources are Christian writers, whether polemical or hagiographical. They are rich in texts and translations of original documents, since there was a strong need for authentic imperial documents to illustrate and bolster their argument or narrative. The most important of these are two contemporaries, Lactantius and Eusebius.

Lactantius (c.250–c.325), in his *de Mortibus Persecutorum* (*On the Deaths of the Persecutors*), only provides the texts of two documents, though both important: the toleration edict of Galerius and the 'edict of Milan'. But in addition, he gives the fullest surviving account of the government of Diocletian and Galerius, with details of the first persecution edict and criticisms of the Prices Edict. He was summoned by Diocletian to be Professor of Rhetoric at Nicomedia and his account owes much to his presence in the imperial capital and close to the court.

Communes res in solidum donari nequeunt, sed portiones eorum qui donant ad eos qui dono accipiunt transitum faciunt. Nec ambigi oportet donationes etiam inter absentes, si ex voluntate donantium possessionem ii quibus donatum est nanciscantur, validas esse. Restat ut, si filius tuus immoderatae liberalitatis effusione patrimonium suum exhaustit, iuxta legum placita praesidis provinciae auxilio utaris, qui discussa fide veri, si integri restitutionem ex filii persona competere tibi ob inprobabilem donationis enormitatem animadverterit, in removendis his quae perperam gesta sunt tibi subvenient. Proposita IIII id. Feb. Mediolani Maximo et Aquilino cons. (286).

CJ 8. 53. 6: *Nec ambigi oportet donationes etiam inter absentes, maxime si ex voluntate donantium possessionem ii quibus donatum est nanciscantur, validas esse.*

CJ 3. 29. 4: *Si filius tuus immoderatae liberalitatis effusione patrimonium suum exhaustit, praesidis provinciae auxilio uteris, qui discussa fide veri, si in integrum restitutionem ex filii persona competere, tibi ob improbabilem donationes enormitatem animadverterit, in removendis his quae peperam gesta sunt tibi subveniet. ideoque non est tibi necessarium adversus immodicas donationes auxilium ad instar inofficiosi testamenti.*

How long he remained at Nicomedia after the persecution began is unknown. The *Divinae Institutiones* appear to have been published originally outside the east before the end of the persecution, while the dark picture of Licinius in *DMP* makes it seem likely that it too was published in the west. But since he cites the two imperial documents as posted at Nicomedia in April 311 and June 313 respectively, he must have maintained a connection with the city or returned there for at least a brief time.⁶⁶ If he did not lose his post as professor at the outbreak of the persecution, he must have done so in 305 or shortly thereafter, when Galerius was allegedly destroying forensic oratory and the liberal arts.⁶⁷ This additional personal blow may account for the especial vitriol that he pours upon Galerius as the evil genius behind the persecution, as well as the bully forcing Diocletian into abdication. Some consider that his bias vitiates the validity of his account, especially as he re-creates dialogue of supposedly secret imperial conversations.⁶⁸ However, these doubts only affect his interpretation of imperial motivation, not the essential accuracy of the texts of the imperial pronouncements, or of the administrative details of the persecution.

Of far greater importance is Eusebius,* bishop of Caesarea (c.260–339), whose works preserve a wide variety of imperial documents.⁶⁹ The first seven books of his *Historia Ecclesiastica* (*Ecclesiastical History*), which contain much direct quotation from earlier writers and even some imperial texts, describe the history of the church down to the ‘peace of Gallienus’, and were probably written before the start of the Great Persecution.⁷⁰ His account of the persecution, based on his experiences in Palestine, was written in three phases:⁷¹

(1) The *De Martyribus Palaestinae* (*Martyrs of Palestine*) recounts the years of persecution in Palestine from 303 to 311. It contains no imperial texts.

⁶⁶ For the chronology, see Barnes (1973a: 40–1; *CE* 13–14) and Creed (1984, pp. xxv–xxvii).

⁶⁷ *DMP* 22. 4: *eloquentia extincta, litterae autem inter malas artes habitae*.

⁶⁸ Thus Kolb (1987, ch. 7; cf. Rougé 1992) wishes to overturn the portrayal of Galerius as being in control over the abdication of Diocletian, while Davies (1989) wishes to shift the responsibility for the persecution from Galerius to Diocletian.

⁶⁹ For a general survey of Constantinian documents in Eusebius, see Dupont (1971b).

⁷⁰ Barnes, *CE* 128–9.

⁷¹ For the complex history of the various edns. of *HE* and *MP*, see Barnes (1980 and *CE* 149–50). More recently, Louth (1990) would place *MP* after Bk. VIII of *HE*, as well as placing the composition of Bks. I–VII after rather than before the persecution.

(2) Books Eight to Ten of *HE* contain Greek translations of eleven documents:

(a) Book Eight (apparently written to replace the *MP* with a more empire-wide perspective) recounts the origin of the persecution and its course down to 311, including a translation of Galerius' recantation edict.

(b) Book Nine recounts the persecution by Maximinus from 311 to 313, and the overthrow of Maxentius by Constantine, and Maximinus by Licinius. It contains four documents illustrating the actions and attitudes of Maximinus.

(c) Book Ten shows the church triumphant and includes the 'edict of Milan' plus five Constantinian documents concerned with Africa and the incipient Donatist problem (although without directly discussing the latter).⁷²

(3) The final passages of Book Ten, added after 324, give a brief account of Licinius' persecution and his subsequent overthrow.

The authenticity of the documents preserved is not in doubt. Two are clearly Greek translations of documents cited independently by Lactantius, while part of Maximinus' rescript on the Christians is preserved in two inscribed copies from Asia Minor.

The second major source of documents is the *De Vita Constantini* (*Life of Constantine*). Eusebius is now generally regarded as the author of the work, though its exact nature and genesis still create controversy.⁷³ It was unfinished at the time of his death c.339. There is no need to see Eusebius as writing an 'official' biography with access to court archives.⁷⁴ His acquaintance with Constantine was not as close as

⁷² The source of these documents is unclear. Eusebius must have obtained them from either some Christian imperial official (Warmington 1985) or perhaps from Chrestus, bishop of Syracuse.

⁷³ Among the more recent work, see Drake (1988) and Barnes (1989a). Both presume that the work was not occasioned by the emperor's death in 337, but was already under way at that date: Drake suggests by 335 (see his summary chronology, pp. 30-1), but Barnes as early as c.325, at which time he considers that many of the documents cited were collected for a projected continuation of the *HE* (pp. 113-14). He also argues that the work as published after Eusebius' death was a conflation of two unfinished and unharmonized schemes, one imperial panegyric and the other hagiography/ecclesiastical history.

⁷⁴ Drake (1988: 31) prefers to see Eusebius at Constantinople in 336-7 with access to both documents and the emperor himself. However, Barnes (1989a: 112-13) suggests that only with the letter to Shapur did Eusebius gain a Latin copy direct from Constantine, while attending the council of Nicaea in 325. Another suggestion is that the *notarius* Marianus was the source for the Shapur letter and that to Alexander and Arius (Warmington 1985).

he would like us to believe⁷⁵ and almost all the documentary sources could have been available to him in Palestine. Some are letters sent to him,⁷⁶ or to other clerics from whom he could have obtained copies. Other texts could have been taken from publicly posted copies, as was probably also the case with a number of the *HE* documents.⁷⁷ The authenticity of at least one document is confirmed by a contemporary papyrus fragment from Egypt.⁷⁸

Most of the remaining documents are not preserved by contemporaries, but come from two African writers concerned with the Donatist question: St Augustine and Optatus of Milevis.* Augustine gives one letter from a proconsul of Africa to Constantine and one from Constantine to a proconsul.⁷⁹ Optatus' work has an appendix of ten items, all of interest, though only six are missives from the emperor.⁸⁰ The authenticity of these texts is generally accepted.⁸¹ Indeed, not only these documents, but others from Eusebius and the codes can be convincingly intertwined.⁸²

Thus, there is genuine consensus that the imperial documents transmitted by Christian writers are genuine and accurate.

(c) *Inscriptions and Papyri**

Inscriptions and papyri provide a rich source of contemporary evidence. Under the principate, the main documentary source for imperial pronouncements is the inscriptions in Greek put up by the cities of the east. These are largely absent in the tetrarchic period, which is notable as being the only time at which imperial documents in Latin were

⁷⁵ As shown by Barnes (*CE* 265–7). Drake (1988: 25–31) suggests another (extended) visit in 336–7, when Eusebius was gathering material for the *VC*.

⁷⁶ Barnes, (*CE* 267) plausibly suggests that Eusebius quoted all the letters that he personally received from Constantine.

⁷⁷ For public posting, see *Eus. VC* 2. 42 and 3. 65. 3; the rescript of Maximinus was taken from the copy set up at Tyre (*HE* 9. 7. 2).

⁷⁸ *P. Lond.* 878 = A. H. M. Jones (1954) = *VC* 2. 26–9. It has, however, been suggested that Eusebius deliberately omitted anti-Arian documents of Constantine (Davies 1991: 616–17). In one passage dealing with disturbances at Antioch, Eusebius actually states that he is omitting some imperial letters (*VC* 3. 59. 4–5). There is, in addition, the question of trying to match laws in the codes with enactments which Eusebius mentions without quoting any text. See e.g. Warmington (1993).

⁷⁹ Letter catalogue, no. 63a; *Ep.* 88. 4 = *C. Cresc.* 3. 70. 81. There is also a fragment of a letter to the vicar of Africa (*C. Cresc.* 3. 71. 82 = *Don. Post Gesta* 33. 56).

⁸⁰ Optatus, *App.* III, V–VII, VIII, X.

⁸¹ Some of the quotations in the main text of Optatus are more problematical. See letter catalogue, nos. 63b–c. For a summary of work on the authenticity and dating of Optatus' documents, see Mazzucco (1993: 73–94).

⁸² For a recent catalogue of these documents, see Maier (1987).

widely disseminated in durable form throughout the east. The foremost example is the Prices Edict, found at almost forty sites scattered through a handful of the eastern provinces,⁸³ but other multiple copies are attested for Maximinus' rescript on the Christians (letter catalogue, no. 55), the *edictum de Accusationibus* (edict catalogue, no. 35), and the law of Constantius and Galerius on fiscal debtors (edict catalogue, no. 18). Imperial documents are also preserved in single copies in Latin, though some of these are extremely fragmentary.⁸⁴ Only the letter of Diocletian to Elephantine is preserved in Greek (letter catalogue, no. 33).

Papyri are less important in the survival of imperial texts, though they often provide insights into imperial administration lacking from other evidence. A handful of imperial rescripts are transmitted on papyrus,⁸⁵ plus a variety of prefectural and other pronouncements closely connected to imperial enactments.⁸⁶

Such documentary texts, being contemporary with the period they represent, have not undergone the alteration or corruption attendant on the process of editing or manuscript transmission, as with the legal and Christian sources. They should, therefore, provide more faithful versions of the original pronouncements. It must be pointed out, however, that this is not always so, since even between the imperial original and the inscribed stone or written papyrus, textual errors can occur for a number of reasons; as a result of dictation,⁸⁷ the differing styles of handwriting,⁸⁸ or even ignorance of Latin.⁸⁹

⁸³ See Ch. 8 Sect. viii.

⁸⁴ Letter catalogue, nos. 36 (= edict 10), 45, 53, edict catalogue, nos. 5, 20, 24, 25, 36; note also *CIL* 5, 2781, lines 31-4 = Bruns⁷ no. 95; the Orcistus dossier (*CIL* 3, 352 and 3, 7000 = *ILS* 6091 = Bruns⁷ no. 35 = *FIRA*² 1. 95 = *Monumenta Asiae Minoris Antiqua*, vii, no. 305); *ILAFr.* 269; the Hispellum rescript (*CIL* 11, 5265 = *ILS* 705); *AE* 1934. 158; Chaniotis and Preuss (1991), 193 = *AE* 1991. 1602 (poss. also Johnston and Frend 1962: 235-6 = Chaniotis and Preuss 1990: 196).

⁸⁵ In Latin: *Chr.* ii no. 380 = Bruns⁷ no. 92, *Chr.* ii no. 381 (letter no. 44), and *PSI* 111 (Diocletian); *PSI* 112 (Constantine, edict no. 42). In Greek (all Constantine): *P. Oxy.* 889 = Barnes, *NE* 235, and *P. Laur.* IV 169 = Keenan 1985 (for both of which see edict catalogue, no. 56); *FIRA*² i no. 96.

⁸⁶ Papyri are used as the basis for catalogue entries as follows: letters, nos. 34, 50; edicts, nos. 4, 6-9, 16, 19, 23, 52.

⁸⁷ Thus in the Prices Edict, the similarity in pronunciation of *B* and *V* leads to a number of errors; e.g. *Vavulnicae* for *Babylonici* at *PE* 9. 17a; *desaeviens* at *PE pr.* 27, but *desaebisse* at *PE pr.* 151; cf. Crawford and Reynolds (1979: 164). For some examples of errors from dictation as opposed to visual misreading in a document of 198/9, see Lewis (1986: 137-9).

⁸⁸ Marichal (1952) demonstrates how the rather archaic script of the imperial chancery accounts for misspellings in the inscribed versions of the Prices Edict and other documents.

⁸⁹ For some erroneous words in the Prices Edict, which might have been caused in a

In a few cases the documentary and other sources coincide, allowing comparison of texts, and providing support for the genuineness and accuracy of manuscript versions. Thus part of the *edictum de Accusationibus* occurs in the codes. As already noted above, two Latin copies preserve the conclusion of the rescript of Maximinus on the Christians, of which Eusebius gives an almost entire Greek translation, and Eusebius also gives the Greek version of Constantine's letter to Palestine, which he claims was circulated in the east, and of which a contemporary fragment has been recovered from Egypt.⁹⁰

variety of ways, see André (1976: 204–5). Note also the mistakes in *Chr.* ii no. 381 (e.g. *parentorum* for *parentum*).

⁹⁰ See Eus. *VC* 2. 23 and *P. Lond.* 878 in A. H. M. Jones (1954) (= *VC* 2. 26–9).

The Gregorian and Hermogenian Codes

Two of the four Roman law codes from antiquity survive in versions that are almost complete (*CTh* and *CJ*). Both have preserved with them constitutions and *acta* giving information on their composition and promulgation. Each bears the name of the emperor under whose auspices the code came into existence¹ and each refers to the codes that preceded it.

For the two earlier codes, however, we have almost no information. Even the identity of their namesakes is enigmatic. Evidence for the *Codex Gregorianus* and *Codex Hermogenianus*, therefore, has to be gleaned from references and ascriptions in the later codes and other legal works. This makes possible the attempted identification of their original content, and guesses about their scope and intent.²

The *Codex Iustinianus* proclaims itself to be an amalgamation and recompilation of the three earlier codes plus the post-Theodosian novels.³ Thus all the pre-*CTh*⁴ material is presumed to derive from *CG* or *CH*. *CJ* does not provide any further details of derivation for any constitutions either individually or *en bloc*. Fortunately, other legal texts that drew on the codes do sometimes give an indication of their sources, with the result that over forty Diocletianic constitutions can be assigned to one or other code. These are listed in Appendices A and B.⁵

¹ Note that Theodosius' original plan, as in *CTh* 1. 1. 5, was for a second legal work, which would also bear his name. It would be compiled from the new *CTh* plus *CG*, *CH*, and the juristic writings. On *CJ*, see also Procopius, *Aedif.* 1. 1. 10.

² The fullest account is still Rotondi (1922), but see more recently Liebs (1987: 30–9, 134–43; 1989: 60–3).

³ *C. Haec pr.* and *C. Summa* 1.

⁴ The earliest MS date of a *CTh* constitution is 18 Jan. 313 (*CTh* 10. 10. 1, 13. 10. 1), although a number of emended subscripts date from Dec. 312 and Jan. 313 (Seeck, *RG* 160).

⁵ The appendices contain only constitutions of Diocletian, but numerous ascriptions to *CG* cover material from earlier emperors. There are a small number of *CH* ascriptions for later in the 4th cent. Both these sets of ascriptions are considered below.

From this listing, we can see that thirteen of seventeen Gregorian texts come from the period 285–90, with two from 294, one from 295, and one possibly from 302. Twenty-three of twenty-five dated Hermogenian ascriptions belong to 293–4, with one to 291 and one to 295. This can be compared with the chronological spread of constitutions in *CJ* and the work of Honoré on the style of the texts. Approximate figures for surviving dated texts in *CJ* for the reign of Diocletian are as follows:⁶

<i>Year(s)</i>	<i>No. of rescripts</i>
284–5	20
286	50
287–9	25
290	115
291–2	20
293	390
294	510
295–305	25

The bulk of the pre-*CTh* constitutions in *CJ* come from the years 293–4, which coincides with the preponderance of Hermogenian ascriptions to these years in Appendix B. It seems as if *CH* was composed almost entirely of texts from these two years.

Such a concentration upon two years is also suggested by the subscript dates, which seem to have had only two abbreviated consular formulae, lacking both imperial names and consular iterations: *AA. conss.* (*Augustis consulibus*) and *CC. conss.* (*Caesaribus consulibus*). Mommsen's identification of the two years as 293 and 294 is the accepted orthodoxy.⁷ It allows the construction of a convincing itinerary for Diocletian from place-names in the subscripts. However, since all such texts have inscriptions appropriate to the first tetrarchy (293–305), the subscripts could refer to at least four joint consulships of Diocletian

⁶ Over 100 constitutions are undated, though an approximate date can often be assigned. At least half of these undated texts bear the inscription *AA et CC* of the first tetrarchy and are thus most likely from either 293 or 294. Honoré (*EL*² 180–1) is able to assign most of the undated rescripts to the tenures of his identified *magistri libellorum* on the grounds of style.

⁷ Mommsen (1860: 433, 440). *PLRE* i often gives all possible joint consular dates for these texts (e.g. Geminus i, p. 389; Quintilianus i, p. 759; Tryphonianus i, p. 924). Kolb (1987: 74–6) challenges Mommsen's assumption in an unconvincing attempt to allow Diocletian's itinerary to bring him to Nicomedia for the proclamation of Galerius in May 293.

and Maximian⁸ and to four of Constantius and Galerius.⁹ Thus the general lack of consular iteration numerals implies that no confusion of years was expected, since only two consular years were involved, one for the *Augusti* and one for the *Caesars*.¹⁰

Further, the names of Constantius and Maximian (Galerius) as *Caesars* (as opposed to the simple abbreviation *CC*) do not appear in the inscriptions to the constitutions, except on the first two available occasions in *CJ*,¹¹ whereas they do occur in later texts attributed to *CG*,¹² as well as in *CJ* texts of the second tetrarchy.¹³ I would suggest that the original *CH* did give full imperial names and consular years in its preface or earliest constitutions¹⁴ and that, so long as it remained complete and self-contained, no chronological misunderstandings would occur. Indeed, the general consistency of dating in *CJ* implies that the *CH* constitutions were taken over without too much problem.

Only four letters survive from 292 (February–April), but there is a constant stream of constitutions starting from 1 January 293¹⁵ and continuing up to 30 December 294.¹⁶ There is then a gap of two months, till the first of the surviving few texts from 295.¹⁷ Furthermore, there is an increasing density of rescripts as 294 nears its close. These indications strengthen the likelihood that there was a plan for the code to contain a comprehensive (or even complete) range of material from just

⁸ 293, 299, 303, and 304. Additionally, the *Augusti* shared the consulship in 287 and 290. For the tetrarchic consulships, see *CLRE* 102–45.

⁹ 294, 300, 302, and 305.
¹⁰ Consular numerals are almost never attested for 293 in *CJ*, except for 2. 12. 17 and a couple of Haloander alterations (1. 18. 5, 2. 4. 17)—see Mommsen (1860: 432). They are attested elsewhere at *FV* 42, 293, 312, 325, and *Cons.* 6. 16. *CLRE* 120 omits the first four of these examples and is almost certainly wrong in citing *Cons.* 1. 9 as an iteration for this year (see App. A). Since 294 was the *Caesars'* first consulate, iterations were unnecessary. However, *CJ* omits their names from all subscripts of 294 (but not from the single certain rescript of 300: 7. 22. 2). Elsewhere, they are named only at *Cons.* 5. 6.

¹¹ The exceptions are *CJ* 1. 18. 5 and 1. 22. 2. The first is not attested in all MSS and the second may be an expansion by Haloander (both are accepted by Krüger's 1877 *editio maior*). The papyrus fragment of the first edn. of *CJ*, which includes the inscription for 1. 18. 5, does not include the *Caesars'* names (*P. Oxy.* 1814 line 52 = Amelotti and Migliardi Zingale 1985: 22) (and see Pl. 1). *FV* contains some odd inscriptions with *Divi Diocletianus et Constantius* (e.g. *FV* 270, 275), including texts from before the first tetrarchy (see Volterra 1973b: 260–6).

¹² The *Caesars* were clearly present in *Coll.* 6. 4 (= *CJ* 5. 4. 17, which lacks the *Caesars'* names) and 15. 3, though both inscriptions are corrupt.

¹³ *CJ* 3. 12. 1, 5. 42. 5, 6. 9. 7.

¹⁴ The two *CJ* constitutions with the *Caesars'* names (being the earliest available in *CJ*) are not considered to have been among the earliest of the original *CH* according to Cenderelli (1965: 157), who places them in sect. 45 of his paligenesia.

¹⁵ *CJ* 1. 18. 5, 2. 3. 20, 3. 34. 8, 5. 74. 2, 6. 26. 7.

¹⁶ *CJ* 3. 34. 12, 6. 2. 18, 8. 42. 25.

¹⁷ *CJ* 6. 20. 14, 23 Feb.

the two years 293 and 294;¹⁸ thus more constitutions (though more concise)¹⁹ were produced as the deadline neared.²⁰

Honoré assigns the composition of all the constitutions of these two years to a single *magister libellorum* (his secretary no. 20), with a period of office stretching from January 293 to December 294. Following the work of Liebs (1964), he identifies the *magister* with the jurist Hermogenian (known from the *Digest*) on stylistic grounds.²¹

This makes *CH* rather different from the other three codes; not only was it compiled by its namesake, but it was written by him *ab initio*. This is further suggested by the subscripts. Whereas earlier material nearly always refers to the date of posting *P(ro)P(osita)*, texts of Hermogenian date more frequently give the date of signing – *D(ata)* or *S(ubscripta)*.²² It is possible that this reflects the rescripts as being noted or copied for compiling as soon as they were authorized and before they were posted. At the least, it implies someone with access to the imperial archives, as opposed to a lawyer unofficially compiling a private collection from publicly posted rescripts.

For the earlier part of the reign, *CJ* gives the largest number of texts to 286 and 290. Little more than a dozen rescripts belong to 291 (mostly from earlier in the year) and four to 292.²³ This also matches our Gregorian ascriptions as in Appendix A, though not as well as in the case of *CH*. The appendix only lists Diocletianic constitutions, but Gregorian ascriptions are found for many third-century emperors, as far back as Septimius Severus.²⁴ *CG* should, therefore, be the source for all pre-Diocletianic constitutions in *CJ*.²⁵

However, whereas we can perceive the figure of Hermogenian behind *CH*, for the Gregorian Code, we do not even know if the author's

¹⁸ Rotondi (1922: 124) supposes that 'il compilatore abbia inserito nel codice tutto quanto il materiale che i registi gli fornivano' (cf. Honoré, *EL*² 142, 166).

¹⁹ Honoré, *EL*² 142.

²⁰ Another suggestion is that there were more petitioners waiting for the emperor at Nicomedia and that any previously accrued backlog could be more effectively processed once the court became stationary again. Diocletian left Sirmium after a stay of almost a year at the end of Aug. 294 and reached Nicomedia in mid-Nov. (Barnes, *NE* 53–4).

²¹ Honoré, *EL*² 130–2, 145, accepted by Liebs (1987: 36; 1989: 62–3). See now Honoré, *EL*² 177–80.

²² The nearly exclusive use of *D* and *S* instead of *PP* for Hermogenian material in *CJ* is not so apparent in the *CH* ascriptions in App. B, where *PP* is marginally more frequent. Indeed, *CJ* may record *D* instead of *PP* in parallel passages (e.g. *PP* at *Cons.* 6. 14 is *D* at *CJ* 4. 20. 7). Other subscript formulae include *supposita* and *subdita*.

²³ These are all *epistulae* whereas the majority of *CG* and *CH* constitutions are private rescripts.

²⁴ *Cons.* 1. 6 (July 196).

²⁵ The earliest is a single text of Hadrian (*CJ* 6. 23. 1).

correct name was Gregorius or Gregorianus, although Gregorius is the more usually accepted.²⁶ Honoré suggests that not only Hermogenian but also Gregorius held the *libelli* and he has even proposed dates for his tenure of office.²⁷ It seems plausible that, like *CH*, *CG* was an imperial project, with the later code supplementing the first as part of a consistent approach to legal policy.²⁸ There may also be an echo of Diocletian's legal initiative in the story that Innocentius of Sardis was entrusted by the emperors of his day (probably the tetrarchs) with some form of law-codifying(?) authority.²⁹ The lawyers charged with codification should be seen as men of stature, not as subservient tools of the emperor.³⁰ This is reflected in the non-imperial nomenclature of both the codes.

How *CG* was compiled is not entirely clear, but some reasonable guesses can be made. The existence of a single central imperial archive seems unlikely, since the court had ceased to have a stable residence in Rome. But it must have been at Rome that sizeable, if scattered and not necessarily comprehensive, imperial records existed.³¹ It therefore seems plausible that Gregorius visited Rome to collect at least Severan material, probably travelling with the entourage of Diocletian to Italy at the end of 291 and going on to Rome.³² For later in the third century, whichever imperial documents were chosen to be kept for storage,

²⁶ As argued by Mommsen (1889: 347–8).

²⁷ See Honoré, *EL*¹ 115, accepted by Liebs (1987: 30–5; 1989: 61); see now Honoré, *EL*² 155.

²⁸ Of recent writers, Wieacker (1988: 173) is cautious on the imperial status of the codes and calls them 'offiziösen', but Turpin (1987: 624–6) strongly argues for their official status.

²⁹ Eunapius, *V. Soph.* 500. *PLRE* i. 457 (Innocentius 1) supposes that the emperors were the first tetrarchy and that Innocentius' writings were legal treatises or collections (cf. Penella 1990: 75). The power granted to Innocentius is described as νομοθετικήν, which most easily bears the meaning of 'law-codifying', perhaps for the city of Sardis. But since Innocentius wrote not only in Greek but also in Latin, a language which Greeks in the east most commonly learnt with a view to legal and administrative careers, Roman law could well have been an area of his expertise. His intelligence is also appropriately described as ἐξεταστικόν. For textual comments on this passage with an important emendation, see Giangrande (1956: 149–50).

³⁰ Honoré, *EL*² 182–4.
³¹ On imperial archives, see Coriat (1990: 228–33; cf. Marotta 1991 on the *liber mandatorum*). Note the argument over whether the Theodosian commission used sources in Africa and Italy precisely because there was no comprehensive archive in Constantinople (Sirks 1993; J. F. Matthews 1993). On modern tendencies to think of ancient archive practice in anachronistic terms, see R. Thomas (1992: 132–44) for Greece and Culham (1989) for Republican Rome.

³² See Liebs (1987: 30–5). He argues first that the few *epistulae* in *CG* are addressed all over the empire and so copies are only likely to have been found in some central deposit and that, further, some letters on financial questions can only have been found

multiple peripatetic emperors were likely to leave such items scattered in an untidy fashion around the empire. This is suggested by the fact that even the representation of constitutions from the reign of Diocletian is extremely uneven. I do not believe that the numbers in which constitutions survive reflect proportionally the numbers in which they were issued.³³ Why is it that only one private rescript survives from the years 288–9?³⁴ It seems hard to accept that campaigning was so difficult and continuous as to extinguish effectively the production of rescripts for two calendar years.³⁵ Yet by contrast there are over one hundred rescripts of 290. Perhaps such abundance only followed a conscious plan to make the code, thus stimulating attention to rescripts as they appeared (clearly the *CH* method), with otherwise only the most recent to hand. Selection must have been conditioned by texts available at the court's location in 290–1 (Sirmium). What happened to the missing texts issued in 288–9, when the emperor campaigned on the Danube,³⁶ is difficult to answer. Any imperial archive would be placed in the nearest major base or tetrarchic capital, where indeed parts of the administration might stay while the emperor was in the field.³⁷ Thus if rescripts of 288–9 were stored anywhere, they should have been at Sirmium. Thus, imperial archives are likely to have been erratic and unreliable sources of material.³⁸ Nevertheless, they must have supplied the bulk

in Rome. Secondly, he notes that Rome predominates among the few places of issue recorded for private rescripts in the pre-Diocletianic material.

³³ Honoré (*EL*² 183) correlates increases in rescripts issued with political situations. I am not sure that the numbers involved are high enough to be significant. Indeed, perhaps the question ought not to be why certain years have more surviving rescripts, but why some years have so few.

³⁴ *CJ* 4. 19. 8. In addition there is one letter from 289 (7. 56. 3 + 9. 2. 9) and one text (8. 46. 6, poss. a letter, see catalogue, no. 5) from 288, but dated to 287 by Mommsen (1860: 424).

³⁵ Suggested by Honoré, *EL*¹ 112, now more cautiously at *EL*² 151–2.

³⁶ Barnes (1976a: 177–8) assigns to Diocletian in 288–9 the campaigns that added one German and one Sarmatian victory appellation to the imperial titulature.

³⁷ Note that Valens issued a law from Noviodunum to his *comes sacrarum largitionum* at Marcianopolis, so that his entourage must have been split between those who stayed with him and other parts of the administration left at his main base (see J. F. Matthews 1993: 35–6). For possible ideas from a much later context as to how this might operate, note the variety of divergent itineraries of the emperor Charles V and his chancery, where, for instance, the chancery may remain at a static base, while the emperor is mobile in a circuit round about (Headley 1983: 164–5). For some palatine officials keeping close to the emperor in the field, see the praise given by Constantine at *CTh* 6. 36. 1.

³⁸ If Honoré (*EL*² 148–55) is right in assigning to Gregorius two distinct periods in office, with a gap from late 287 to late 289 mirroring the gap in the rescripts, this may reflect Gregorius concentrating on his own rescripts and/or having difficulties tracking down those that he had not composed. However, despite some indication that another

of Gregorius' texts, partly from Diocletian's court and partly from Rome.

There was some desire for the amassing of imperial rescripts as a source of authoritative precedent. An imperial visit, for instance, was an important opportunity to collect imperial replies.³⁹ A small number of copies of mid-third-century and also Diocletianic rescripts have been found in papyri.⁴⁰ The second-century jurist, Papirius Justus, compiled a work in twenty books entitled *De Constitutionibus*, consisting almost entirely, as far as can be ascertained from the surviving extracts, of constitutions of Marcus and Verus.⁴¹ If the only pre-Diocletianic impetus to collect imperial rescripts came from private individuals, especially jurists, then might not their collections or other writings be a source of *CG* material?⁴² The small number of Marcus' constitutions in *CJ* (less than a dozen) makes it unlikely that the work of Papirius Justus was much utilized, and only one constitution corresponds closely enough in both the Code and the juristic writings from the Digest to suggest that the one could have been drawn from the other.⁴³ It has, however, been suggested that a handful of *CJ* texts with the emperor described

secretary was taking over in Nov. 287 (*EL*² 151, but probably western rescripts of Charisius), I still find a continuous period in office more likely.

³⁹ For instance the *apokrimata* of Severus (*P. Col.* 123). For a complete list of the rescripts, etc. associated with the imperial visit to Egypt in 199–200, see Westerman and Schiller (1954: 27–8), Oliver (1989), nos. 220–43, 248, 252, 254, and *P. Oxy.* 3614 and 4068.

⁴⁰ e.g. *P. Oxy.* 1407 = Oliver (1989), nos. 290–3 (four rescripts, Valerian to Aurelian); *PSI* 111 and *Chr.* ii 380 = Bruns⁷ no. 92 (Diocletian), although Turpin (1991: 107 n. 34) suggests that these Diocletianic examples may derive from the codes. For a list of imperial constitutions on papyri, see Taubenschlag (1952). More up-to-date texts and commentary on pre-Diocletianic papyri can be found in Oliver (1989) and the unpub. thesis of Mourgues (1990: i).

⁴¹ For examples of the surviving extracts, see *D* 49. 1. 21, 50. 1. 38, and 50. 8. 11–13 (all the texts are reassembled by Gualandi 1963: i. 428–31). The work appears to have been thematic rather than chronological in arrangement (Volterra 1968). Paul's six books of *Decreta* were a collection of rulings made in court by Severus (e.g. *D* 4. 4. 38, 28. 5. 38). Tarutienus Paternus may have made a collection of imperial constitutions on military matters, but this deduction is based on an imaginative interpretation of Vegetius, *Epit. Rei Mil.* 1. 8 and 1. 27, and probably he simply cited some constitutions within his writings (see Milner 1993: 9 n. 3).

⁴² The number of rescripts surviving in the juristic writings in the *Digest* is not large (thirty-two are listed at Honoré, *EL*² 50 n. 91 for the period after 193; a comprehensive collection of citations is gathered by Gualandi 1963: i).

⁴³ *D* 34. 1. 13. 1 = *CJ* 6. 37. 1 (*sine die et consule*). Note that *D* 50. 1. 21. 6 is the same as *CJ* 10. 41. 1. 1, but omits the first half of the code text. Cf. also *D* 48. 18. 1. 16 with *CJ* 9. 41. 1. The constitution merely alluded to at *D* 5. 3. 20. 12 appears to be given in full at *CJ* 6. 35. 1. It is also possible that the single early text of Hadrian (*CJ* 6. 23. 1) derives from Marcian's *Institutes*, which may be the direct source for the

as *divus* in the inscription echo the manner of the jurists and so were added to *CG* from the juristic writings.⁴⁴ But even if so, since most code rescripts carry a dated subscript of the sort lacking in juristic citations, the number of texts drawn from the jurists' writings cannot have been great. It is probable, however, that jurists kept records (in more detail?) of more imperial constitutions than they had occasion to cite in their written work. Indeed, irrespective of the question as to whether Gregorius was an imperial official carrying out an imperial project, *CG* might still be considered to have had a 'private' aspect, if it was at least in part a compilation made from other pre-existing private collections.⁴⁵

The pattern that emerges suggests that *CG* was published c.292 as a compilation of constitutions from at least the time of Hadrian up to 291, and that *CH* was published c.295, comprising constitutions of 293–4.

Some of the ascriptions mar the chronological neatness so far proposed. As far as *CG* is concerned, two texts appear to belong to 294.⁴⁶ The introductory phrases before each (*ex eodem libro et tit.* and *item eodem corpore et titulo*), which do not specifically name *CG*, ostensibly refer to *CG* bk. 1, title 10 from the previous constitution. This could be a compiler's mistake, arising from a mechanical repetition of the previous source, with the true derivation being from *CH*.⁴⁷ It is also possible that a rescript with a *CH* ascription has dropped out of the

reference to this constitution at Just., *Inst.* 2. 10. 7, since elsewhere the *Institutes* mirror surviving extracts of Marcian in the *Digest* (Liebs 1987: 34 n. 38).

⁴⁴ See Dell'Oro (1983) and Liebs (1987: 34). It is also possible that they were taken directly into *CJ*. The texts in question are *CJ* 2. 12. 1–2, 5. 25. 2, 6. 54. 1–2 (cf. 7. 62. 1). Compare to juristic citation at e.g. *D* 26. 6. 2. 2, 27. 1. 10. 4. Since the jurists normally omit the date, this might explain why some of these texts carry the subscript *sine die et consule* (*CJ* 6. 54. 1–2). Note that this subscript appears in the Code version of the sole common Code/*Digest* rescript (*D* 34. 1. 13. 1 = *CJ* 6. 37. 1).

⁴⁵ Wolff (1952) supposes that textual variants between *CJ* doublet rescripts derive from Gregorius taking the same constitutions from different existing collections. He also suggests that *FV* 275–86 represents a run of constitutions taken from an independent if closely contemporary collection of tetrarchic rescripts.

⁴⁶ *Cons.* 9. 18–19.
⁴⁷ Where a number of laws from the same emperors are cited in succession, *CJ* only gives the imperial names in the first of the series, heading each of the remainder with the formula *idem AA*. This formula is sometimes repeated in error where the issuing emperors differ from those of the previous constitutions (e.g. *CJ* 3. 44. 14 and 5. 58. 3). It is possible to imagine similar errors occurring in the citation of code sources. *CH* was not divided into books, which makes the mistaken reference to a book number even greater. But if *CH* was regarded as a *liber singularis*, a reference to *CH* Bk. 1 might be possible, even if unnecessary.

text.⁴⁸ The subscript dates carry the typically Hermogenian *Caesaribus consulibus*.⁴⁹

Also problematical is the citation by Thalelaeus preserved in the *Scholia* on the *Basilica* of the opinion of the pre-Justinianic jurist Eudoxius. Thalelaeus' version mentions an imperial constitution according to its *CJ* reference, but the text also appears to preserve Eudoxius' original citation, which must refer to *CG* bk. 10, even though the constitution under consideration dates to April 293.⁵⁰

The Damascus edict, however, is firmly dated to 295 both by the *Collatio*⁵¹ and in *CJ*.⁵² The subscript to the Manichees letter gives the diurnal date (31 March) and place of issue (Alexandria) but not the year.⁵³ Although possible dates include 287 (thus in accord with most other *CG* dates) or less likely 307, current orthodoxy assigns it to 302.⁵⁴ Thus, just as the Damascus edict postdates the main part of the code, the Manichees letter may well do likewise. An appendix was added to the code at some point,⁵⁵ but both of these texts are assigned to books within the existing code structure (bks. 5 and 7 respectively). It would seem, therefore, that additions were made to *CG* at some point to make a second edition, unless the original publication date is later than 292.⁵⁶

The heading of one Gregorian ascription refers to Diocletian and Maximian as *dd. nn.*, i.e. *domini nostri*.⁵⁷ This implies that they were still reigning when this constitution was put into the code and therefore gives a *terminus ante quem* of 305—but, perhaps, since it lacks any allusion to the Caesars, it should imply the period with only two *Augusti*

⁴⁸ As supposed by Cenderelli (1965: 147 n. 10/11), who assigns these two texts to his *CH*.

⁴⁹ The Caesars are missing from both inscriptions, but that is also the case with some other *Cons.* texts, which do have a positive Hermogenian ascription (e.g. *Cons.* 6. 13–19).

⁵⁰ See Thalelaeus in *Schol. Bas.* 22. 1. 43, ed. Heimbach, ii. 488 (= *IA* ii. 527). The *CJ* ref. in question is 2. 21. 4, while the alternative (probably *CG*) ref. is 10. 4. 54. The date in Apr. 293 is secure since it is also given for another fragment of this constitution to the same addressee (*CJ* 2. 24. 4).

⁵² *CJ* 5. 4. 17.

⁵³ *Coll.* 15. 3.

⁵⁴ See Barnes, *NE* 55. The dating is fully discussed in letter catalogue, no. 37.

⁵⁵ *Schol. Sin.* 5. 10. See also Rotondi (1922: 139), where a proposed restoration of *Schol. Sin.* 19. 52 would show such an appendix as containing texts of Theodosius II.

⁵⁶ Chadwick (1979: 137) favours a single publication date after the latest attested items. He assigns *Cons.* 9. 18–19 to *CG* in 294, with the Damascus edict in 295 and, finally, the Manichees letter in 297 (his preferred date, which he discusses on 137–44).

⁵⁷ *Coll.* 1. 10 (Nov. 290).

before the creation of the first tetrarchy in 293. This would be consistent with a publication date *c.* 292.

Two *CH* ascriptions lie outside 293–4. One is dated to 295.⁵⁸ Since it was posted in Milan, this shows that not only the rescripts of Diocletian, but also those of Maximian were included in the code. It is not clear, however, whether these would have been in the original code or added later. Of other western places of issue, those in *CJ* are normally considered corrupt, while those in *FV*, which are accepted, are often thought to come from a separate western source and not *CG* or *CH* (though they are included by Cenderelli (1965) in his *CH* paligenesia). The question of Hermogenian's career and the western rescripts is examined in Chapter 4. Suffice it to say that Maximian was at least minimally represented in the code.⁵⁹

The second ascription outside 293–4 is more difficult. Not only is it dated to 291,⁶⁰ but it is stated in the succeeding section to be additionally present in *CG*, dated to 287.⁶¹ This is unusual, in that *CH* does not seem in any way to have been intended to replace *CG*, but rather to supplement it. They continued to exist side by side, later joined by *CTh*, being used as sources concurrently by various legal texts. All three codes only became redundant upon their joint recompilation into Justinian's code. It is hard, therefore, to see how the same constitution was included in both codes, nor why that constitution should have conflicting dates four years apart.⁶² Rotondi regarded the Hermogenian ascription, only found in one manuscript, as a mistaken interpolation and considered that the constitution should have the same Gregorian origin as the Damascus edict that precedes it.⁶³ This is too controversial a text to show pre-293 material in *CH*. The code may have included slightly earlier material, where Hermogenian saw fit, but this cannot be demonstrated.⁶⁴

⁵⁸ *Cons.* 5. 7.

⁵⁹ On the question of Maximian's legislative activity, see Pasqualini (1979: 112–20).

⁶⁰ *Coll.* 6. 5. The date is corrupt. See letter catalogue, no. 2. ⁶¹ *Coll.* 6. 6.

⁶² Nörr (1981: 7 n. 18) suggests that the disparate dates of two twin texts (*CJ* 2. 3. 10, 227 = *CJ* 5. 14. 1, 206) arise because one was excerpted from *CG* and one from *CH*. Note that for three twin constitutions of the first tetrarchy, one in each pair carries the subscript *sine die* or *sine die et consule* (*CJ* 2. 4. 38 = 6. 31. 3; 2. 6. 4 = 6. 19. 1; 8. 37. 7 = 5. 59. 1). I think that these differences could well arise from later copying errors and editing; e.g. different Justinian commissioners drawing on different copies of the same code.

⁶³ Rotondi (1922: 127). The confusion is described as *contaminatio* by Cenderelli (1965: 161 n. 46) and he assigns the text to his *CH* qualified by a question mark. Another suggestion is that the constitution was reissued or at least reposted (Liebs 1987: 38).

⁶⁴ Note that the four *epistulae* of Spring 292 stand isolated between the latest likely

What appears much more likely is that *CH* underwent later expansion. The only texts specifically ascribed to *CH* after 295 are seven constitutions in the *Consultatio* belonging to the reign of Valentinian and Valens.⁶⁵ This attribution is open to doubt. It appears in the original edition of the *Consultatio* by Cujas in 1577, based on the only known source, an apograph in his possession since 1563. However, Cujas showed no knowledge of the Hermogenian attribution when he placed all seven texts in his 1566 edition of *CTh*, at the same time omitting them in his assemblage of *CH* fragments.⁶⁶ This contradiction makes it unlikely that the reference to *CH* is correct.

Other inferences can be made from the tetrarchic period itself. There is a handful of texts in *CJ* dating from 295–305, which must derive from *CH* or *CG*.⁶⁷ Perhaps at this time, as well, some western constitutions were added by Hermogenian himself, after a period spent at the court of Maximian.⁶⁸ The eastern texts may therefore be Gregorian, especially as the two secure Gregorian texts from these years were given at Damascus and Alexandria in the east, with the only secure Hermogenian text being from Milan in the west.⁶⁹ The only certain provenance among the constitutions of the second tetrarchy is from Maximinus in Egypt.⁷⁰ The few texts of 305 may all be assigned to *CG*, which would therefore have been published in a second edition c.306 at the court of Maximinus, or possibly at the law school of Beirut, containing eastern texts of the first and second tetrarchies 295–306.

There is also a sizeable number of constitutions of Constantine in

CG material of 291 and the earliest *CH* material of 293. Three of the texts are to the governor of Phoenice (at Tyre) and therefore of eastern provenance. Liebs (1987: 36–7) suggests that Hermogenian was in Phoenicia in 292 and collected these texts, which then became the earliest in the original *CH*. But they could just as easily represent eastern texts added to the second edn. of *CG* (as discussed below), having been collected in nearby Beirut (with its law school). For Beirut as a place of posting in *CTh*, see Seeck, *RG* 11–12.

⁶⁵ *Cons.* 9. 1–7. One text is dated to 364 and six to 365. Three are private rescripts and four *epistulae* to office-holders.

⁶⁶ Volterra (1982: 183–6). Against this view, see Liebs (1987: 142).

⁶⁷ Note that there are no laws in *CJ* from the years 306–12. The addition of the laws from 295–305 presumably took place c.305, unless we imagine either or both codes undergoing constant revision up to 305.

⁶⁸ Honoré suggests that Hermogenian was *magister libellorum* of Maximian in the mid 290s (*EL*² 177). This is examined in Ch. 4.

⁶⁹ Rotondi (1922: 140–1).

⁷⁰ *CJ* 3. 12. 1 from Egypt. See letter catalogue, no. 48, plus a possible letter to the governor of Syria from Damascus (*CJ* 2. 12. 20, letter no. 28).

CJ not found in *CTh*.⁷¹ One of these texts opens with the wording: *exemplum sacrarum litterarum Constantini et Licinii AA*.⁷² This form of citation occurs only once in *CTh*,⁷³ but is attested eight times in Diocletianic material from *CJ*,⁷⁴ as well as in constitutions ascribed to *CG* elsewhere.⁷⁵ There is also a constitution of Constantine and Licinius with the subscript *sine die et consule*.⁷⁶ This formula is attested in pre-305 material in *CJ*,⁷⁷ but does not occur in *CTh*. This conforms to a law of Constantine, dating to July 322, which denies validity to any constitution, from that time onwards, that lacks diurnal and consular dating.⁷⁸ We must conclude, therefore, that at least these two texts and probably another two, which mention Licinius in the inscription,⁷⁹ came from an expanded Hermogenian Code. The mention of Licinius makes it likely that these constitutions were collected before his fall in 324. Further, they have indications of eastern provenance, one being a rescript to the governor of Cappadocia, and thus originated from the chancery of Licinius, rather than from that of Constantine. The collection of these texts was also, therefore, carried out in the east before 324.⁸⁰ One last

⁷¹ Strictly speaking, all the pre-438 laws in *CJ* should derive from one of the three existing codes. Thus, constitutions occurring in *CJ*, without parallel citation in *CTh*, should originate from *CG* or *CH*. However, I think it unlikely that many of these could have come from a *CG* or a *CH* undergoing constant expansion into the 5th cent. There are considerable gaps in *CTh*, from which some texts might have come. The only attempt to incorporate *CJ* material of *CTh* date back into *CTh* is Krüger's incomplete edn., bks. 1–6 (Berlin, 1923) and bks. 7–8 (Berlin, 1926). It is also possible that any laws surviving outside the three codes found their way into the material collected by the Justinianic commission. As discussed above (n. 44), some imperial constitutions could have been added directly into *CG* or later *CJ* from the juristic writings. Note that the most likely source for the information given at Hero Alexandrinus, *Stereometrika* 2. 54 is an imperial constitution addressed to the praetorian prefect Modestus c.370 (Corcoran 1995). The date for the compilation of *Stereometrika* 2 is uncertain, although it is hard to imagine the specialist regulations it mentions surviving for long independently of *CTh*. It is also usually assumed that the original collection of the Sirmonian Constitutions must have taken place before the issue of *CTh* (for some discussion of their history, see Vessey 1993).

⁷² *CJ* 7. 22. 3.

⁷³ *CTh* 16. 5. 20. *CTh* does not attribute any legislation to Licinius.

⁷⁴ *CJ* 3. 3. 3. 7. 16. 40. 9. 2. 8. 9. 41. 8. 10. 1. 5. 10. 32. 2. 10. 42. 10. 11. 55. 1.

⁷⁵ See *Coll.* 1. 10. 6. 4.

⁷⁶ *CJ* 6. 1. 3. Mommsen considered this a sign of derivation from *CH*; see his edn. of *CTh*, i/1, p. clx.

⁷⁷ *CJ* 3. 38. 10. 5. 59. 1. 5. 62. 19. 6. 2. 10. 6. 19. 1. 6. 26. 6. 6. 36. 4. 7. 4. 11. 7. 53. 8. 7. 62. 6. 9. 2. 8. 9. 41. 8. 10. 32. 2. 11. 55. 1 (*sine die* at 4. 2. 14). It is not clear whether this in an addition in *CJ* or occurred in the original source compilations. It is not attested in our specific attributions to *CG* and *CH*.

⁷⁸ *CTh* 1. 1. 1. Even *CTh* laws before this date do not lack an appropriate subscript, though these are sometimes corrupt. ⁷⁹ *CJ* 3. 1. 8. 7. 16. 41.

⁸⁰ Licinius' laws were rescinded in 324–5 (*CTh*, 15. 14. 1–2).

piece of evidence needs to be mentioned. Sedulius says of Hermogenian *doctissimum iuristatorem, tres editiones sui operis confecisse*.⁸¹ If Hermogenian did indeed produce three editions of his code, we can create a speculative chronology as follows:

295: first edition produced at the court of Diocletian,⁸² with comprehensive coverage of the years 293–4.

After 298: second edition produced, with additional western rescripts, following Hermogenian's residence at the court of Maximian.

Before 324: third edition produced at the court of Licinius or possibly the law school of Beirut with additional eastern texts.

As to the dating of the codes, therefore, we can conclude the following. The *Codex Gregorianus* was compiled c.292, consisting of imperial constitutions from the time of Hadrian up to 291. Additions were made to it, creating a second edition (published in the east under the second tetrarchy) and a later appendix, though no ascription can be dated with certainty after the abdication of Diocletian. The *Codex Hermogenianus* was compiled c.295, consisting mainly of private rescripts of the years 293–4. Additions were made to it on more than one occasion; perhaps after 298, before 324, and less possibly c.365.⁸³ Thus most of the activity surrounding the codes, not only their original editions, but also revised and expanded versions, belongs to the tetrarchic period before 324.⁸⁴

Both codes consist predominantly of private rescripts concerned with private law. Diocletianic constitutions are rare in Book 1 of *CJ*, which deals with church and government, and decrease in frequency throughout the last four books, which deal with criminal and administrative law—Book 12 has only five rescripts.⁸⁵ The direct ascriptions to *CG* contain two letters and one edict, only one of which is synchronic with the original publication, while there are none such in the *CH* ascriptions. There is a handful of edicts, letters, and *acta* in *CJ*, but texts that

⁸¹ *Epistola ad Macedonium (altera)* in *CSEL* x. 172. Hermogenian's work is compared to the three edns. of Origen's *divina lex*.

⁸² Liebs (1987: 37; followed by Honoré *EL*² 166) proposes publication after Hermogenian's arrival at Maximian's court in Milan.

⁸³ Either of the first two of these suggestions could instead apply to *CG*.

⁸⁴ Only two *FV* constitutions (*FV* 37 and 248) postdate the fall of Licinius, so that this collection should also reflect the tetrarchic fervour for amassing rescripts.

⁸⁵ This can best be seen in the listing of *CJ* Diocletianic constitutions by Mommsen (1860: 356–412). Seven books (nos. 2–8) take up fifty pages, an average of seven pages a book; while the last three books only cover two pages between them.

are not private rescripts cannot exceed fifty out of more than 1200 constitutions. This neglect of other forms of imperial pronouncement only increases the likelihood of the close connection between the compilers of the codes and the *magistri libellorum*, as authors of the rescripts.

The constitutions in both codes are almost exclusively in Latin. There is indeed, no evidence for Greek in *CH*. In *CG* material of Diocletianic date, traces of a speech in Greek survive in some *acta* of Diocletian.⁸⁶ A handful of earlier texts are in Greek, mostly undated, but these are taken from Byzantine legal sources (mainly the *Basilica*) and need not have been in Greek in the original.⁸⁷ Since, however, jurists are happy to cite Greek constitutions in the *Digest*,⁸⁸ there is no intrinsic reason why either code could not have contained some Greek.⁸⁹

In both the codes, the constitutions were grouped together under titles, but *CG* was additionally divided into at least fourteen books.⁹⁰ The highest reference to *CH* is title 69, constitution 120.⁹¹ Judging from the proportions in which texts of Gregorian and Hermogenian date survive, it appears that *CH* was perhaps a third or a quarter the length of *CG*.⁹²

It seems probable that, as with the later codes, the first two grouped

⁸⁶ *CJ* 10. 48. 2. On bilingual *acta*, see Ch. 10 Sect. i no. 5.

⁸⁷ The texts are: *CJ* 4. 24. 1 (Severus and Caracalla, 207); *CJ* 1. 9. 2 (undated, no emperors, but demonstrably a private rescript, wrongly attributed to Justinian by Linder 1987: 367–8); *CJ* 4. 20. 1, 9. 6. 1, 10. 16. 1 (all undated, no emperors, not demonstrably private rescripts). In addition, a Greek constitution has apparently been lost at *CJ* 4. 33. 1 (poss. also *CJ* 2. 5. 2, though this may be post-Diocletianic).

⁸⁸ e.g. *D* 16. 1. 2. 3; 49. 1. 1. 1; 49. 1. 25; 50. 6. 6. 2, 6. Modestinus' *Excusationes* were actually written in Greek, with Latin citation where appropriate (see extracts scattered through *D* 27. 1. 1–15).

⁸⁹ A couple of Greek terms are used in surviving extracts of Hermogenian and Charisius (*D* 50. 4. 1. 2, 50. 4. 18. 5).

⁹⁰ *Coll* 3. 4. Although the text is ascribed to Bk. XVIII, this is regarded as an error for Bk. XIII. Rotondi (1922: 157) also ascribes two other titles to Bk. XIII, emending from Bks. III and VII respectively. For a possible Bk. 15, see *Collectio* 242 and Rotondi (1922: 167–9). Bk. 13 is referred to at *CGV* 13. 14 and all marginal ascriptions in *FV* refer to that book (*FV* 266a, 272, 285, 288), under the same title, *ad legem Cinciam de donationibus*. The largest number of titles within a book is 18 (*ALRW* 1. 6), and of constitutions within a title 33 (*ALRW* 1. 1), 32 (*Coll* 6. 6), or poss. 54 (*IA* ii. 527). For a reconstruction of book and title headings, see Rotondi (1922: 154–7). One curious theory is that *CG* comprised fifteen books, with *CH* as its one-book appendix, making sixteen in all, and that this is why *CTh* ran to sixteen books.

⁹¹ *Schol. Sin.* 3. 5. The second reference to *CH* in this passage has been emended to give a higher title number of 71 (as argued by Cenderelli 1965: 137–40). He also attempts to construct a palinogenia of *CH* at pp. 143–81. This is divided into 147 sections.

⁹² Liebs (1964: 24).

their texts under each title in date order. The Visigothic epitome of *CG* reproduces some of the format of the original, and under one title gives constitutions in chronological order from the years 242, 244/5, 245, 286, and 287.⁹³ The Visigothic *CH* is too brief to throw light on the Hermogenian order, but four constitutions cited successively in the *Collatio* from the same *CH* title progress from June 293, to March, October, and finally December 294.⁹⁴ It seems plausible to suppose that *CJ* took over whole runs of constitutions in chronological order from the codes.⁹⁵ The longest possible such example is *CJ* 7. 16, *de liberali causa*, which provides a series of thirty-two texts of Hermogenian date.⁹⁶ In other cases, *CJ* has clearly disentangled material that stood together. Thus the constitutions from a known *CH* title *de pactis et transactionibus* must have been chosen and then divided between two *CJ* titles, *de pactis* (nine texts) and *de transactionibus* (twenty four texts).⁹⁷

What was the purpose of the codes? We have little explicit evidence. In setting up the first commission for his new code project, Theodosius II stated it was to be on the following basis:

Ad similitudinem Gregoriani atque Hermogeniani codicis cunctas colligi constitutiones decernimus . . .

We decree that all constitutions be collected together after the manner of the Gregorian and Hermogenian Code . . .⁹⁸

But the emperor further wished it to include only *leges generales*, whereas *CG* and *CH* contained almost exclusively private rescripts (it being unlikely that the codes had been so expanded with different material in the fourth century as to present a rather different aspect by 429). I presume that what the emperor means is that all three codes are equivalent as being authoritative compilations of imperial constitutions under appropriate book and title headings.

The Theodosian Code is also seen as serving the same function as its

⁹³ *CGV* 3. 6. 1-5. *FV* seems to preserve some chronological runs (*FV* 275 80 and 282-6), but it is not certain that it drew on *CG* (see Wolff 1952: 139-49).

⁹⁴ *Coll.* 10. 3-6.

⁹⁵ Nicoletti (1981: 65-79) discusses the survival of the legislation of Gordian III via *CG* into *CJ* and argues that *CJ* preserves the *CG* order.

⁹⁶ Cenderelli (1965: 169) assigns another twenty constitutions to his reconstructed *CH* title.

⁹⁷ See *ibid.* 67-8, plus 145-8 for a reconstruction of the original *CH* title. *CJ* appears to be following the separation of these titles in *CG* (for which titles, see Rotondi 1922: 154), which seems to have been more purely 'classical' than *CH* in this regard (Liebs 1987: 139).

⁹⁸ *CTh* 1. 1. 5 = *Gesta Senatus* 4.

predecessors, as being composed for *scholasticae intentioni*. This does not mean for purely academic study, but rather for professional use in the courts. This, of course, only tells us what was thought of the two earlier codes over a century after their compilation.⁹⁹

We have already seen that Hermogenian was *magister libellorum* and that therefore compilation of *CH* and by analogy of *CG* was an imperial project.¹⁰⁰ We do not know whether the codes contained constitutions ordering their creation or promulgating them. However, the Visigothic *interpretatio* of *CTh* 1. 4. 3 (the so-called Law of Citations) in the Breviary of Alaric says of the two codes:

Gregorianum vero et Hermogenianum ideo lex praeterit, quia suis auctoribus confirmantur ex lege priore sub titulo de constitutionibus principum et edictis. However, this law passes over the Gregorian and Hermogenian Codes, because they are confirmed by their own ratification in the earlier law under the title 'on imperial constitutions and edicts'.

Could this refer to the original Diocletianic publication? We do not know whether *CG* or *CH* contained such a title. The closest *CJ* parallel, *de legibus et constitutionibus principum et edictis*, only starts with a law of 316.¹⁰¹ However, texts from the *CTh* title, *de constitutionibus principum et edictis*, which exactly matches the Visigothic phrase, are placed in *CJ* under other titles, such as *de diversis rescriptis*, which do contain pre-305 material.¹⁰² Such material, however, is only concerned with rescripts, and the private emphasis of the two Diocletianic codes makes it unlikely that there was a specific title *de constitutionibus principum et edictis*. The *interpretatio* is probably referring to the Theodosian title.¹⁰³ The Breviary excerpts from this Theodosian title do not refer to the two earlier codes.¹⁰⁴ The sole reference to these codes is in a text we have already mentioned, *CTh* 1. 1. 5. This is restored to its place in the code, having been preserved only in the *Gesta Senatus*, which attribute it to precisely the title *de constitutionibus principum et edictis*. If the breviarist knew this law, he probably took the imperial

⁹⁹ See Turpin (1987: 621-4).

¹⁰⁰ I have already mentioned that the increase in number of constitutions towards the end of 294 seems to imply a deliberate plan in the writing of the imperial rescripts, another sign that *CH*, at least, was an official project. ¹⁰¹ *CJ* 1. 14. 1.

¹⁰² *CTh* 1. 1. 1 = *CJ* 1. 23. 4. *CJ* 1. 23. 1-3 date to 222, 270, and 292 resp. On the scattering of *CTh* constitutions in *CJ* titles, see Rotondi (1922: 186).

¹⁰³ This is the assumption of Volterra (1983: 231).

¹⁰⁴ *CTh* 1. 1. 1-4. Constitutions may have fallen out between the first two texts, but were probably already missing when the Breviary compilers did their work.

desire to create a code following the model of the two earlier codes as an implicit confirmation of those codes. Of course, the explanation in the *interpretatio* is illogical. The confirmation of *CG* and *CH* by Theodosius II in 429 can hardly be the reason why they were omitted from the Law of Citations issued by Valentinian III in 426. However, the *interpretatio* is really concerned with sanctioning the selection of texts in the Visigothic collection. Thus it uses the Law of Citations to justify the extracts taken from Gaius, Papinian, and Paul, but has to find alternative authority for its epitomes of *CG* and *CH*. The *interpretatio* provides no evidence for any Diocletianic laws bestowing authority on the two codes.

It is also interesting that the codes were not named with tetrarchic symmetry, *Codex Diocletianus* and *Codex Maximianus* (or *Codex Iovius* and *Codex Herculus*).¹⁰⁵ Whatever imperial self-promotion went on under Diocletian, the law codes needed no triumphalist titulature and the credit for them was not denied to the lawyers who compiled them.¹⁰⁶

There was probably a mixture of motivations behind the codes, though none is explicitly attested. Further, since we have no idea how widely the codes were disseminated, we cannot estimate their effectiveness in fulfilling any of the aims suggested below. However, it can be safely assumed that the codes made knowledge of imperial pronouncements more widespread than ever before.

One aim may have been to reduce the abuse of rescripts by making an authoritative collection.¹⁰⁷ Any existing private collections that may have contributed to *CG* could be vetted and given full authority via the new code. This would also serve to control the quibbling of lawyers and perhaps iron out some ambiguities in the law, though both continued as banes of the legal process,¹⁰⁸ despite the confidence with which

¹⁰⁵ The best-known examples of this parallelism are the *Thermae Diocletianae* at Rome and the *Thermae Maximianae* at Carthage: Jerome, *Chron. s.a.* 302 (ed. Helm, 227). Note also the *porticus Iovia* and *Herculia* of the restored theatre of Pompey (*ILS* 621 2) and the *portae Iovia* and *Herculia* at Grenoble (*ILS* 620).

¹⁰⁶ For some further thoughts on the question of *Codex Diocletianus*, see Turpin (1987: 624–5).

¹⁰⁷ See Turpin (1987).
¹⁰⁸ Ammianus speaks of both ambiguous legislation and the quibbling of lawyers in his attack on the legal profession (see esp. 30. 4. 11–12). Diocletian (*CJ* 9. 9. 27) and Constantine (*Pan. Lat.* 4(10). 38. 4) both made attempts to remove ambiguities in the law, while Constantine sought to control the use of the existing juristic writings, which gave rise to *perpetuas contentiones* (*CTh* 1. 4. 1. 9. 43. 1). The senators praising the promulgation of the Theodosian Code called out twenty-three times, *constitutionum ambiguum removistis* (cf. *De Rebus Bellicis* 21). Honoré (*EL*² 184) sees this hostility to legal subtleties as a post-Hermogenian and especially a Constantinian development.

several texts of Hermogenian date assert *ambigui iuris non est*.¹⁰⁹ Of course, how the copies of the codes were themselves authenticated and kept free from contamination is unknown.¹¹⁰

Another purpose may have been to improve the efficiency of governors, who now possessed purely civil authority over smaller provinces and could presumably perform their judicial functions rather better, or at least with less distraction, than before. The codes would serve as suitable manuals. This would also help in the dissemination of Roman law in general throughout the provinces, where the *Constitutio Antoniniana* may have created theoretical Roman citizens, but not a full working system of purely Roman justice.

A final motivation may have been the desire to ease the pressure on the emperor and the office of the *libelli*.¹¹¹ It is hard, however, to estimate the effect, if any, of the promulgation of the codes on the volume of demand for private rescripts, since most of our information comes from the compilations themselves. *CTh* includes no certain private rescripts (nor was it intended to).¹¹² Nevertheless, some private rescripts were still issued in the fourth century. A handful are attested for Constantine,¹¹³ with a further three for Valentinian and Valens.¹¹⁴ The two codes did not supersede the need for the issuing of private rescripts. The desire for collecting them, even as additions to the existing codes, dwindled away almost entirely.

¹⁰⁹ *CJ* 3. 22. 4, 4. 9. 2, 4. 26. 7, 5. 34. 10, 6. 20. 11, 7. 1. 3, 7. 27. 2; cf. *non ambigitur*. See Honoré, *EL*² 168 nn. 353–4.

¹¹⁰ For this problem with the Theodosian Code, see the *Constitutio de Constitutionariis* (*CTh* (Mommsen), i/2. 4) of 443 (*Gesta Senatus* 8). Note that the senators see multiple copies (presumably for ease of correlation) as one way of preventing interpolations: 'ne interpolantur constituta, plures codices fiant' (*Gesta Senatus* 5).

¹¹¹ Honoré, *EL*² 182–3. For Constantine's desire not to be distracted by too many matters being brought to his attention, see *CTh* 11. 29. 1, 15. 1. 2; cf. *CTh* 1. 15. 1 (governors overwhelmed by a mass of rescripts).

¹¹² The most cited possibility is *CTh* 1. 2. 4 (see App. C). Note that at *CTh* 2. 21. 1 (358, to the governor of Cilicia), the clause *omnis hereditas dote dicatur exhausta* has apparently been turned by Justinian's commissioners at *CJ* 3. 30. 1 into wording appropriate to a private rescript, *omnia bona a matre tua dote dicantur exhausta*.

¹¹³ See App. C.

¹¹⁴ *Cons.* 9. 2 (to Pompeius Favonius, Feb./Mar. 365, cited in the basilica of the Baths of Commodus), 9. 5 (to Aelia Bavonia, July 365 at Milan), and 9. 6 (to Ampelia, July 364 at Sirmium). In the late 4th cent., the authority of rescripts issued in reply to governors' *consultationes* was limited to the case for which they were issued, and this must have affected private rescripts as well (*CTh* 1. 2. 11, 398).

3

Private Rescripts

I INTRODUCTION

Private rescripts are the subject of this and the next two chapters. This chapter gives an account of the rescript system and rescripts in general, their legal force, their format, the nature of the petitions that prompted them, and the citation of precedent and uses of the past as found both in the rescripts and other pronouncements. Chapter 4 discusses the Honoré method of dividing rescripts according to marks of style attesting to their authorship by different *magistri libellorum* and summarizes evidence for those officials known or supposed to have been connected with the composition of imperial rescripts or pronouncements in general. Chapter 5 details all the information that can be gathered on the recipients of the rescripts, both as to their status and occupation and as to their geographical origin. The role of the governor as revealed by the rescripts is examined in the first part of Chapter 9.

II THE RESCRIPT SYSTEM

The population of the empire petitioned the emperor about all manner of topics. Petitions from cities or high-ranking individuals would normally be answered by letter, as would consultations from governors and officials. Other petitions were answered with *subscriptiones* via the rescript system. The details of this process have been subject to considerable controversy and are still quite obscure. The account given here broadly follows that proposed by W. Williams (1974, 1980, 1986).¹ I find it convincing, not because alternative interpretations of the evidence are impossible, but because it is based on a realistic assessment of the limited and passive nature of the imperial government.

There was no postal system for petitions to be forwarded to the emperor.² It was up to the petitioner to see to the delivery of the petition, either in person or by proxy. Thus the villagers of Scaptoparena

¹ See also Honoré, *EL*² ch. 2.

² W. Williams (1980: 284-7).

petitioned Gordian III via a soldier, who was their fellow-villager.³ A papyrus of c.259 shows a petitioner from Egypt arranging for the delivery and presentation of a petition to the emperor through intermediaries, probably taking advantage of the comparative closeness of Valerian in Syria.⁴ Many people, especially the poorer or less well connected, will have been able to approach the emperor only when he was nearby.

The most notable occasion on which a governor did forward a petition to the emperor was during the Donatist controversy. Anullinus, proconsul of Africa, sent on two documents from the Donatist bishops in April 313.⁵

Just as it was normal for the petitioner to effect delivery, so also with receipt of the reply. The court and its environs must have thronged with those awaiting an answer,⁶ and presumably the hopefuls would have had to trail after the emperor, when he was on the move.⁷ One reason for the increase in the number of rescripts issued at the end of 294 may have been a sudden influx of petitions after the court reached Nicomedia. If it was known in advance (or guessed) that the emperor was to winter in Nicomedia, petitioners may well have preferred to wait for the court to settle there, rather than chase it across the empire.

The classic subscript procedure was for the imperial reply to be written at the foot of the petition (literal *subscriptio*). However, by this time only the answers to petitions were posted up in batches in some prominent place in the city where the emperor was currently residing.⁸ There are some examples of private rescripts posted where the emperor could not have been,⁹ but these are rare exceptions and do not occur in our period.

³ *FIRA*² i no. 106; cf. *FIRA*² i nos. 103, 107 (Burunitani and Araguani); *SEG* 37 no. 1186 = *AE* 1989. 721 (Takina).

⁴ *P. Oxy.* 3366. See discussion by Parsons (1976: 417–20).

⁵ Augustine, *Ep.* 88. 2 (letter no. 63a). One document was the charge against Caecilian, the other the petition itself (given at Optatus 1. 22). In another instance, the *preces* of a man accused of murder seem to have been forwarded by the governor (*Coll.* 1. 10, letter no. 10).

⁶ In the absence of any evidence and with so many likely variables, it is impossible to say how long was the average wait. Honoré (*EL*² 44) suggests a month to six weeks, but this can only be a guess.

⁷ Note a recently published papyrus, in which an ambassador described himself as 'about to go off in the footsteps of the emperors' (cited by Millar (1992: 636) from G. A. Souris in *Hellenika*, 40 (1989), 153).

⁸ The *liber libellorum* referred to in the Scaptopareni inscription is thought to refer to the posted roll of rescripts, not to an imperial archive as such (W. Williams 1974: 100; 1986: 202–4).

⁹ See Honoré, *EL*¹ 29 nn. 43–4, and 32 n. 59, and *EL*² 46–7. A few pre-Diocletianic

As noted in Chapter 2, there is a change in our material, since the Gregorian Code texts among the rescripts (i.e. all texts up to 291) almost exclusively carry the date of posting. The material from the years 293-4 (Hermogenian Code) generally provides the date of signing or issue by the emperor.¹⁰ The most likely explanation of this difference of emphasis can be sought in the circumstances of composition of the two codes. The difference should arise because on the one hand, CG collected existing texts after posting, whether they survived in the imperial archives or had already been recorded independently at the time of their original display; while on the other hand, CH was compiled as the constitutions were issued and thus recorded them (or a sizeable proportion of them) before or without regard to posting.¹¹ This practice of recording date and place of signing or posting has enabled the reconstruction of Diocletian's itinerary from the private rescripts.¹²

The composition of the rescripts, or at least of those requiring some juristic expertise, was the task of the *a libellis* or, for our period, the *magister libellorum*.¹³ In the case of many petitions, especially simple requests for benefits, the emperor must have been able to make an instant decision. But for more complex legal issues, the extent to which the emperor was involved with the details of the law is uncertain. Little can be ascertained in the tetrarchic rescripts that can be attributed to imperial intervention rather than the individuality of the *magister*.¹⁴

rescripts (some might be *epistulae*) are marked *accepta* (e.g. CJ 6. 27. 2, 8. 37. 1, Cons. 1. 6, ALRW 2. 7 = CJ 7. 59. 1); cf. CJ 5. 3. 5 + 9. 9. 18, *accepta* at Antioch, but during Valerian's visit.

¹⁰ As noted previously, in CJ material of CH date, D. or S. predominate, but in the Hermogenian ascriptions given in App. B the balance between these and PP is more even.

¹¹ This is broadly the view of Simon (1977: 10 n. 49). Honoré (EL¹ 27-8) supposed that *data* signified 'given for despatch to the province', but now (correctly) doubts this (EL² 53 n. 117).

¹² See Mommsen (1860) and Barnes, NE 50-6.

¹³ The date for this change in title is unknown, but it probably occurred under the rule of Diocletian at the latest (as argued for the *magister sacrarum cognitionum* by Cuq 1881: 134-6). Early holders of the title include Caelius Saturninus and Arcadius Charisius, both of probable Diocletianic date (see Ch. 4 Sect. iv).

¹⁴ Honoré (EL¹ 45): 'Very little of a personal character is to be found in his [Diocletian's] rescripts.' The extent of the individual stamp of earlier emperors mainly in letters, has been studied elsewhere: Sherwin-White (1966: 536-46) (Trajan), W. Williams (1976) (Hadrian and the Antonines), id. (1979) (Caracalla), and Reynolds (1982: 110-12) (Gordian III and others). See also Honoré (1975) showing Justinian as the true author of a handful of the constitutions issued in his name. Earlier evidence also shows emperors taking an active and decisive role in cases heard before them, making genuine decisions in the face of disagreement among their juristic advisers. See Honoré (EL² 17-24), discussing Marcus and especially evidence relating to Severus from Paul's *Decreta* (e.g. D 4. 4. 38, 28. 5. 93, 32. 27). The two trial records in our material are not full enough to see what part the emperor played in the decision (see Ch. 10 Sect. i nos. 3 and 5).

to whom the problem was probably referred for him to produce a juristically learned answer, perhaps after some initial discussion in the *consilium*.¹⁵ It is probable that those rescripts which required *adnotationes*, or were otherwise exceptional, engaged the imperial interest to a greater degree and required a specific decision.¹⁶ However, there is no reason to believe that the emperor did not personally read and sign (and if necessary send back for redrafting) all rescripts issued in his name, so that the use of the first person in the texts was not purely formulaic.¹⁷ This is no system of *rois fainéants*. Those texts that show emperors in action in a way hidden by the rescripts and other written imperial documents are discussed in Chapter 10.

The rescripts are in Latin, including most of the few papyrus examples.¹⁸ Only the papyrus rescript of Constantine is an exception to this.¹⁹ It is likely that this too was originally in Latin, though whether the Greek version, which was authoritative enough to be cited in court, was also an 'official' text is unclear. It was usual for petitions in Greek to be answered in Latin.²⁰

The rescripts were normally headed by the imperial names without elaborate titulature followed by the name of the petitioner(s) in the dative. Rescripts tend not to be long. Some *CJ* texts are as short

¹⁵ The role of the *consilium* (later consistory) rather than the *magister libellorum* alone in the formulation of replies is stressed by Peachin (1989: 205; 1992: 458).

¹⁶ Turpin (1988: 290–5) argues that *adnotationes* (and presumably their associated rescripts) reflect the personal decision of the emperor.

¹⁷ Honoré, *EL*² 1, 34. *CJ* 1. 23. 3 speaks of rescripts *nostra manu subscripta*. For evidence of the imperial signature, see letter catalogue, no. 53. Note that in the Greek text of the Takina rescript, the imperial subscription is given in Latin (*rescripti*) (Şahin and French 1987 = *SEG* 37 no. 1186 = *AE* 1989. 721; cf. *et alia manu: scripsi. recognovi* in *FIRA*² i no. 103 col. 4 line 9). On the subscription formulae *rescripti, recognovi*, representing the authorization of respectively the emperor and the secretary, see Mourgues (1995) and Honoré, *EL*² 43–4. The problem of corruptly obtained rescripts is a different question. Note the insistence of Constantine that governors should sign their own subscriptions and not allow their assessors to do so (*CJ* 1. 51. 2).

¹⁸ Rescripts on papyri are *Chr.* ii nos. 380–1 and *PSI* 111.

¹⁹ *FIRA*² i no. 96. The only Greek in Diocletianic material in *CJ* is traces of a speech recorded in *acta* at *CJ* 10. 48. 2 (Ch. 10 Sect. i no. 1). The Greek texts in the pre-Diocletianic *CJ* constitutions are all restored from Byzantine legal sources (mainly the *Basilica*) and need not have been in Greek in the original *CG*. See above Ch. 2 n. 87. Of western MSS of *CJ*, only the *Veronensis* retains any Greek (a handful of Justinian's constitutions).

²⁰ W. Williams (1974: 96; 1986: 186, 201), Millar (1977: 247). There is no parallel with the *libelli* to the division between the *magistri epistularum* (*Latinarum*) and *epistularum Graecarum*. The *Digest* contains a handful of Greek constitutions of emperors, of which only two appear to be private rescripts (presumably in response to Greek petitions): *D* 16. 1. 2. 3 (Severus) & 50. 6. 6. 2 (Pertinax).

as six²¹ or seven words,²² though these may well be abbreviations of longer constitutions.²³ However, evidence from inscriptions²⁴ as well as from other legal sources, which may have more faithful versions,²⁵ show that a single short sentence might suffice. Honoré estimates an average of just over five lines per rescript for the period 193–305.²⁶

It does not appear that the petitioner received back the original petition with the *subscriptio* and the imperial signature added.²⁷ In order to have an authenticated copy for use in court, he would have had to record the details from the posted copy and have the authenticity of his version independently witnessed. It does appear however that some original rescripts came into the hands of petitioners, though I am not convinced that there was a general change in practice from 292, whereby all rescripts presented in court had to be originals.²⁸ This is discussed further below, Section v.

The only contemporary example to show this copying and authentication at work is not from the imperial process, but from the procedure used for prefectural subscriptions at Alexandria. An affidavit of authentication of June 290 survives for a petition and reply before Titius Honoratus, prefect of Egypt. The relevant portion is translated as follows:

He, who is named in the petition, testified that he extracted and collated the following petition together with the subscription from a file of petitions fastened together delivered to Titius Honoratus the most distinguished prefect, posted in public in the Sebasteion.²⁹

²¹ *CJ* 4. 2. 11, 4. 35. 15, 4. 35. 17. ²² *CJ* 4. 23. 4, 5. 17. 4.

²³ One seven-word text is normally joined to another extract thirteen lines long (*CJ* 4. 10. 4 + 5. 74. 1, both to Liciniana).

²⁴ The Burunitani, Scaptopareni, and Aragueni rescripts are all brief (*FIRA*² i nos. 103, 106–7).

²⁵ In the *Consultatio*, where extracts are denoted by such phrases as *inter cetera et ad locum*, the shortest text not so marked is thirteen words (*Cons.* 9. 18): *Pactum, quod contra iuris formam provinciae rector factum animadvertit, id infirmare minime dubitabit.*

²⁶ Honoré, *EL*² 187–9.

²⁷ On the question of receipt and copying of rescripts, see W. Williams (1980: 287–94; 1986: 187, 200–4). The most important text in this regard is the Scaptopareni rescript of Gordian III (*FIRA*² i no. 106 = *CIL* 3. 12336 = Bruns⁷ no. 90 = *IGRR* 1. 674 = *Inscriptiones Graecae in Bulgaria Repertae*, iv no. 2236), which was copied down and authenticated from the posted copy in Rome.

²⁸ As argued by Simon (1977: 10–11, citing *CJ* 1. 23. 3); cf. Honoré, *EL*² 47–8.

²⁹ Hanson (1984: 195–6). Hanson (*ibid.* 193) suggests that such authentication of subscriptions, of which there are few surviving examples, was not common and indeed not strictly necessary, though it would impart greater validity when the recipient sought to use the document. For a possible return of a prefectural subscript with a petition, see

The responses could be read by more than just the person(s) to whom they were addressed. Thus informal copies could be taken and used by anyone who chose, such as happened with the *apokrimata* of Severus. The difficulty of vetting the authenticity of such collections was probably one reason behind the Diocletianic codes, which sought to provide authoritative collections.

III STATUS OF RESCRIPTS

Imperial pronouncements had the force of law. Thus Ulpian says:

Quod principi placuit, legis habet vigorem; . . . quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. Haec sunt quas vulgo constitutiones appellamus. Plane ex his quaedam sunt personales nec ad exemplum trahuntur: nam quae princeps alicui ob merita indulgit vel si quam poenam irrogavit vel si cui sine exemplo subvenit, personam non egreditur.

What the prince decides has the force of law . . . Therefore, whatever the emperor has laid down by letter and subscription, or decided in court, or made by extrajudicial pronouncement, or decreed by edict, is agreed to be law. These are what we commonly call constitutions. Clearly, those among them that are personal are not used as precedents: for what the prince has deservedly granted to anyone, or if he has inflicted a penalty or has rendered assistance in an unprecedented way, this does not extend beyond that individual.³⁰

Thus a *scriptio* or private rescript³¹ can be called a *lex*, but is only authoritative for a particular case, being neither precedential nor innovative. In contrast to this passage of Ulpian, our material seems to suggest two differences in interpretation: that rescripts are not strictly speaking laws (*leges*) and that they did indeed provide authoritative precedents, though without being radically innovative.

First, rescripts, unlike edicts and *epistulae*, are never referred to as *leges* in our material. Maximian addresses Claudius Menander:

Unde instructus istius lege rescripti excipe adversarium apud iudicem competentem.

P. Oxy. 3094 lines 28–9 (217/18), although the interpretation of this text is not entirely clear.

³⁰ *D* 1. 4. 1; cf. *D* 1. 2. 2. 11 and Gaius, *Institutiones* 1. 5.

³¹ Thus interpreted in the trans. of Watson (1985) and by Honoré (*EL*² 33 n. 1, citing other uses of *scriptio*, e.g. Gaius, *Inst.* 1. 94). Turpin (1991: 103) takes the phrase *per epistulam et subscriptionem* as a hendiadys, denoting a letter subscribed by the emperor. According to this interpretation, Ulpian omits private rescripts entirely.

And so, as directed by the terms of this rescript, take your opponent before a competent judge.³²

In this case, *lex* does not describe what the rescript is in constitutional vocabulary, but rather refers to the authoritative argument (based on earlier jurists) laid out in it. It is similar to saying *secundum tenorem rescripti nostri*.³³ The usage is also parallel to another and common employment of *lex* to denote the terms or conditions of a contract or agreement.³⁴ The only description of a private rescript as a law is in trial proceedings of 340, where a rescript of Constantine is described in Greek as τὸν θεῖον καὶ προσκυνητὸν νόμον.³⁵

Rescripts do not legislate. They do not seek to change the law. Rather they seek to make an authoritative, or even definitive, exposition of what the law already is. In this they go beyond the restriction to a single case implied by Ulpian in the passage quoted above. They are in effect part of the system of *responsa prudentum* carried to its extreme. The emperor is the supreme *prudens*, and can play the part all the more convincingly since the true authors of imperial rescripts, the *a libellis* or *magistri libellorum*, are expert jurists.³⁶ The rescripts and indeed the two Diocletianic codes thus occupy a grey area on the border of the conventional division between *ius*, as interpreted in the juristic writings, and *leges*, being the other forms of imperial constitutions.

The language of the rescripts demonstrates their nature admirably. The answers and explanations are in terms of existing law. Thus recurrent phrases from *CH* include *certissimi/manifestissimi/non ambigui/notissimi iuris est*.³⁷ Similar phrases occur throughout the material.

By contrast, verbs of decision or decree are usually indicative of letters.³⁸ In rescripts, they can occur in exceptional circumstances, where a particular privilege is given³⁹ or an indulgence is granted as by

³² *Cons.* 5. 7. ³³ *CJ* 4. 19. 18.

³⁴ e.g. *CJ* 4. 33. 3, 4. 34. 6, 4. 38. 3, 4. 57. 6, 4. 58. 4.

³⁵ *FIRA*² iii no. 101, p. 321. There is, however, a wide range of uses of the word *nomos* in papyri (Taubenschlag 1948, esp. p. 71 for *nomos* as rescript), so this example need not be interpreted as a literal rendering of *lex*.

³⁶ Honoré (*EL*² 190-1) suggests identification of six *Digest* jurists with his secretaries: Papinian, Ulpian, Arrius Menander, Herennius Modestinus, Hermogenian, and Arcadius Charisius, plus one anonymous author of *Digest* extracts.

³⁷ For examples of these and others, see Honoré, *EL*² 167-8 nn. 339-53.

³⁸ The use of *decernimus* in *CJ* 2. 51. 2 is taken as a sign that this is an *epistula* (letter catalogue, no. 23). Elsewhere it is used in undoubted *epistulae* (7. 35. 4, 9. 20. 7). Compare *concessimus* at *CJ* 7. 64. 9, which may well be a letter (catalogue, no. 30).

³⁹ *Decernimus* is used when granting immunity from *munera* to law-students at Beirut (*CJ* 10. 50. 1).

adnotationes discussed below. On other occasions, such verbs are only used to refer to the emperor's own previous legislation:

Exceptionem non numeratae pecuniae non anni sed quinquennii spatio deficere nuper censuimus.

We have recently decreed that the exception of money not having been paid expires after not one but five years.⁴⁰

Similarly, *placere* appears in the past tense as *placuit*⁴¹ or *iam pridem placuit*.⁴² The papyrus rescript of Constantine on *praescriptio longi temporis* uses the Greek equivalent *ἡρεσεν*. I think it likely therefore that this text is not introducing the forty-year prescription, but merely explaining it to the petitioner. The *lex Constantianiana* on this topic referred to by Valentinian I should be the original enactment of the change and not this rescript.⁴³

Some specific legal actions require a rescript.⁴⁴ Certain adoptions could only be effected *per rescriptum principis*.⁴⁵ In other cases, a positive stand is taken rather than simple exposition, as implied by phrases such as *nec sineremur* or *nec patimur*, but even here the emperor is seeing to the upholding of existing law.⁴⁶ In one difficult case, where strict law conflicts with family ties, the emperor devises a special procedural solution: *iuxta formam igitur, quam consulti dedimus, praetorem adiri oportet* ('Therefore, according to the form, which we have given after being consulted, you should approach the praetor.')

⁴⁷ It also appears that judges could be appointed by rescript.⁴⁸ Such rescripts may have signified direct imperial intervention with the specific appointment of judges for a case, perhaps as in the case of the slave and the murdered master to be heard before the praetorian prefect.⁴⁹ Note also the petition of the Donatists to Constantine, which

⁴⁰ CHV 1. 1 (the Visigothic *interpretatio*, of course, has no hesitation in calling this text a *lex*).

⁴¹ CJ 2. 24. 5, 4. 21. 10, 4. 57. 6, 6. 20. 16, 6. 24. 9, 7. 32. 8; cf. 8. 50. 16, *iuxta ea quae benigne placuerunt*. The use of the perfect need not imply a decision made long before and could indeed refer to the case in question (e.g. as in the letter CJ 3. 12. 1), but it is at least ambiguous in a way that the present tense would not be.

⁴² CJ 2. 24. 3, 2. 28. 1, 2. 39. 2.

⁴³ CJ 7. 39. 2. The connection between the papyrus and *lex Constantianiana* is made by Kraemer and Lewis (1937: 257-8), who also presume (pp. 360-1) that the papyrus rescript is a letter to an official of senatorial rank, not a private rescript to a decurion (as must be the case; see Millar 1977: 245). The papyrus is seen as innovative by Simon (1977: 12-13).

⁴⁴ Strictly non-judicial favours could be also be granted (Turpin 1991: 115).

⁴⁵ CJ 8. 47. 6, 8. 47. 8. See J. A. C. Thomas (1967).

⁴⁶ CJ 5. 62. 23.

⁴⁷ CJ 1. 22. 1.

⁴⁸ CJ 1. 19. 1. Even if such a distinction can be made, between advice to approach the

specifically requested judges from Gaul; the emperor (in part) acceded to this request, so that three Gallic bishops were included in the council at Rome.⁵⁰ However, since possession of a rescript authorizing an approach to the governor would serve as an effective means of initiating legal action, it is possible that any rescript, with just such a phrase as *aditus praeses provinciae providebit*, was tantamount to the appointment of the judge.⁵¹

The language of imperial virtues or self-promotion is largely absent from rescripts, being a mark of letters and edicts. Only a few examples occur. Some things are said to be inconsistent with *nostri saeculi tranquillitas*,⁵² while one text says *augusta maiestas decrevit*.⁵³ *Indulgentia* can carry various meanings. In the earlier empire in particular, it may denote a benign imperial disposition,⁵⁴ but, in the legal sources and especially in the third-century rescripts, it comes more to denote a specific act of indulgence, either a grant of *beneficia* to an individual or a group, or alternatively a pardon, whether personal or as a general amnesty.⁵⁵ In Diocletian's rescripts, the concrete usage predominates.⁵⁶ Thus *indulgentia* is used to describe the grant of privileges to veterans⁵⁷ and imperial *adrogatio*,⁵⁸ as well as specific pardons to individuals⁵⁹ and general amnesties.⁶⁰

governor and specific appointment of a judge for a case, there is no evidence to suggest that in the latter instance the petition resulted in the production of two documents—the rescript to the petitioner specifying the judge and a letter of appointment to the judge in question.

⁵⁰ Optatus 1. 22–3; but see letter catalogue, no. 63b.

⁵¹ This is discussed further in Ch. 9 Sect. i.

⁵² *CJ* 2. 17. 4 (Diocletian) and *FV* 33 (Constantine); cf. *abhorret saeculo nostro* (*CJ* 2. 17. 3).

⁵³ *CJ* 10. 1. 4. Honoré (*EL*² 155 n. 144, 180 n. 554) attributes this text to the more rhetorical *magister Charisius*.

⁵⁴ See Cotton (1984) for the early emperors and Trajan in particular.

⁵⁵ For the development of the terminology in the legal sources, see Waldstein (1964: 130–4).

⁵⁶ See *ibid.* 133, 172–3 (incl. discussion of *Coll.* 6. 4. 3). Some of these cases may mean the benevolent imperial disposition from which the act comes rather than the act itself, but those cases talking of *generalis indulgentia* are unambiguous in referring to the grant itself.

⁵⁷ *CJ* 7. 64. 9. Although this text uses the verbs *concessimus* and *remisimus* in the perfect in a manner consistent with rescript form, the lack of a personal element combined with the general nature of the content makes it possible that this is in fact a letter. Note also the use of *indulgentia* in the grant of immunity from *munera* in the imperial *acta* given at *CJ* 10. 48. 2. ⁵⁸ *CJ* 8. 47. 2.

⁵⁹ *CJ* 9. 51. 10 (*indulgentia nostra interveniente sis reversus ad lares tuos*) and 9. 51. 12 (*deportationis sententiae veniam indulgentia nostra consecuta*). But note also 9. 51. 11 (*ex benignitate nostra facta cum bonis restituito*).

⁶⁰ *CJ* 9. 43. 2 and 9. 51. 9. The first of these is dated to Feb. 286 and should relate to an amnesty granted after the death of Carinus in Spring 285.*

A good example to illustrate the function of a rescript is in fact somewhat exceptional, the case of the adopting woman. In December 291, Diocletian on the Danube replies to the petition of a woman called Syra:

A muliere quidem, quae nec suos filios habet in potestate, adrogari non posse certum est. Verum quoniam in solacium amissorum tuorum filiorum privignum tuum cupis in vicem legitimae subolis obtinere, adnuimus votis tuis secundum ea, quae adnotavimus, et eum proinde atque ex te progenitum ad fidem naturalis legitimique filii habere permittimus.

It is certain that a woman, who does not have her children in her *potestas*, cannot adopt by adrogation. But since you desire to take your stepson in place of legitimate offspring as a consolation for the loss of your sons, we accede to your pleas in accordance with what we have set out in our *adnotatio*, and allow you henceforth to have him as if he were born to you and was in truth your natural and legitimate son.⁶¹

This rescript has been approached in a number of ways. Differing views have supposed that the text is almost entirely Justinianic interpolation and that Diocletian did not introduce any innovation in *adrogatio* by women;⁶² or alternatively, that the text is authentic and that Diocletian is here introducing an innovation by allowing a woman to adopt by *adrogatio*,⁶³ perhaps following precedents from Greek or Graeco-Egyptian law.⁶⁴

The correct interpretation shows how rescripts really worked. First, there is no need to explain difficulties in the text by appealing to Justinianic interpolation. The text is understandable as it is. It starts by restating the law, that there can be no adrogation by women in this situation.⁶⁵ The law is not altered. But the emperors proceed to grant an exception by an *adnotatio*, intervening personally and authoritatively.⁶⁶ The use of the verb *permittere* is rare in the rescripts and indicative of the unusual situation here. But if there is no innovation in the general law, is there innovation in the exception? Even here, it seems that

⁶¹ CJ 8. 47. 5.

⁶² Albertario (1934) assigns the change to Justinian for three reasons: (1) the passage is interpolated to agree with the Justinianic attitude expressed at *Institutiones* 1. 11. 10; (2) the origin of the practice is Greek (*υιοθεσια*); (3) part of the motivation is Christian (esp. the use of *solacium*).
⁶³ J. A. C. Thomas (1967: 418–27).

⁶⁴ Thus Turpin (1988: 296) and Clark (1993: 59). For *materna potestas* in Graeco-Egyptian law, see Taubenschlag (1929; 1955: 149–57).

⁶⁵ For a list of similar statements in the legal sources, see Ruggeri (1990: 59), citing among others: *Tituli Ulpiani* 8. 8a (*FIRA*² ii. 272 = *IA* i. 455), and Gaius, *Institutiones* 1. 104 and *Epitome* 1. 5. 2.

⁶⁶ Turpin (1988: 296–7).

exceptional *adrogatio* by a woman occurred in the first century AD.⁶⁷ Therefore, the rescript does not alter the law, nor is it the first to provide a precedent for an exception.

Rescripts build on what has gone before. The jurists of the chancery follow the lines of classical law, developing in the same directions.⁶⁸ This is part of the reason for the frequent citation of laws, *senatus consulta*, jurists, and earlier emperors, examined later in this chapter, Sections vii and viii.

The private collection of texts shows the extent to which they were themselves regarded as authoritative precedents. The official compilations of the Gregorian and Hermogenian Codes are an even better measure of their stature and the dissemination of the codes must have made the rescripts more widely known than ever before.

However, rescripts should not be seen for the most part as innovative, as deliberately setting out to change the law. For instance, the concept of a specific imperial *remissio mercedis* (remission of rent) with its own *raison d'être* being introduced by rescripts appears to be incorrect. Rather, the same rules are applied on this matter in both juristic and imperial statements, the latter developing within the existing framework.⁶⁹

Major changes would be effected by edict or *epistula*, as with Constantine's edict on testamentary law (edict catalogue, no. 48). Since it was difficult to disseminate important pronouncements even to top officials,⁷⁰ a private rescript, issued for a single case, which might be read by only its addressee, was a poor means to introduce change.⁷¹ Innovation by rescript would only come via gradual development of the law. Although rescripts were statements of law, there was sufficient difficulty and difference of interpretation over the law for the authoritative

⁶⁷ Thus, Ruggeri (1990: 62–4), arguing that the example always quoted, of the adoption of Galba by his stepmother Livia Ocellina (Suetonius, *Galba* 4. 1), should be seen as more than a change of name imposed by will. Note also *D* 5. 2. 29. 3 allowing female adoption *iussu principis*. This passage is from the *Opiniones* of Ulpian, which, though not genuine, need not be regarded as post classical fabrication and may have been composed by a contemporary follower of Ulpian (Santalucia 1971, i. 75–131; Ruggeri 1990: 68–9). Honoré (*EL* 74–6) identified the author as a *libellus* in 222–3, but now follows Liebs in dating the *Opiniones* to the 330s (*EL* 101).

⁶⁸ As demonstrated for the law of testamentary succession by Tellegen-Couperus (1982; see also 1980: 331). Note also the conclusions of Herrmann (1980) on leases.

⁶⁹ Neeve (1983, esp. 332–6).

⁷⁰ e.g. the apparent ignorance of Ablabius at *Sirm.* 1 (333).

⁷¹ Turpin (1991: 104) gives an instance where Papinian seems to have been unaware of an important earlier rescript of Marcus and Verus, which was only added in the annotations on his (Papinian's) work by Marcianus (*D* 23. 2. 57a).

imperial reply to clarify or modify the previous understanding of the legal position. But even where a rescript provides the first known example of some significant difference from previous legal practice, it does not follow that it was indeed the first and was intended to alter the general law. Nor do I think that prospective inclusion in the codes would have caused rescripts to be composed with radical changes enshrined in them, though they might have contained more in the way of general statements of law as background.⁷² Thus while the prescription of twenty years in relation to criminal charges may have been introduced by Diocletian, I would be unwilling to turn the rescript that mentions it into the vehicle for the general promulgation of that change.⁷³ The codes were there to illuminate current law and disseminate more widely what already existed. Rescripts are *esplicativi* not *innovativi*.⁷⁴

IV NEGATIVE REPLIES

The imperial office is closely associated with a beneficial ideology. Petitioners should not leave the emperor without something to their advantage.⁷⁵ The nature of much of our evidence means that in any case only favourable responses will be recorded. No city would set up an inscription celebrating the refusal of its request.⁷⁶ The rescripts provide something of a corrective to this view. It seems clear that the petitioners for rescripts expected a good deal of the emperor's answer. The emperor should effectively have ensured them a won case, perhaps by

⁷² Hermogenian favours statements of general principle, but these serve to help the petitioner (and users of the code?) to understand the rescript. Thus Honoré (*EL*² 176): 'Through his secretary the emperor is educating the petitioner and, more widely, the public to accept a legal proposition, which in a sense they already know'; cf. *EL*¹ 127-9.

⁷³ The rescript in question is *CJ* 9. 22. 12 (293, of *CH* date). Wołodkiewicz (1985) argues convincingly that the twenty-year prescription is not a Justinianic interpolation, but is entirely appropriate to the reign of Diocletian as part of the gradual development of various types of prescription from the 2nd cent. onwards (for early examples, note Antoninus Pius at *D* 49. 14. 1. 3 and Severus and Caracalla at *CJ* 4. 61. 2). Another twenty-year prescription appears elsewhere among the fragments of Hermogenian (*D* 44. 3. 13. *pr.*). Wołodkiewicz (p. 17) regards the statement of the rule in the rescript as indicative of the desire of Diocletian and Hermogenian for the generalization of rules to be included in the code. This may well be true, but I am not satisfied that the constitution was itself introducing the change.

⁷⁴ As noted for *FV* 33-4 by Nardi (1984: 2308).

⁷⁵ As reported of Constantine at Eus. *VC* 4. 4.

⁷⁶ Note that a negative imperial reply to Samos only survives because it was inscribed at Aphrodisias, whose privileges it highlighted. See Reynolds (1982: 104-6), listing also further examples.

changing or suspending the law in their favour, or should have guaranteed the enforcement of what they believed to be their rights.⁷⁷ But many faced disappointment as the reward for their efforts in gaining access to the emperor. On a number of occasions the emperor explains to the recipient the functions that a rescript cannot perform.⁷⁸ Thus a rescript cannot rescind an otherwise properly completed will,⁷⁹ sale,⁸⁰ or donation.⁸¹ It cannot revive a case concluded by a compromise⁸² or where the appeal was not lodged within the appropriate period of time.⁸³ Nor will the emperor uphold ownership gained by violence.⁸⁴ One Alexander wants to repossess his slave, having found that she subsequently gave birth and that he has, therefore, sold more than he intended. The imperial reply admonishes him:

Incivile atque inusitatum est quod postulas, ut mancipium, quod tradidisti et hoc modo dominium eius transtulisti, invito eo ex nostro rescripto tibi adsignetur.

What you demand is unlawful and unprecedented, that a slave, whom you handed over and by this means transferred ownership, should without his (the buyer's) consent be assigned to you by our rescript.⁸⁵

In addition to these cases, where the wish of a petitioner is specifically described as beyond the power of a rescript to implement, there are many others, where the petitioners are told more generally that their desires are quite improper or illegal. Hermogenian's replies also contain descriptions of the petitioner's request as 'improbum desiderium'.⁸⁶ Thus the polyonymous Antiochus Atticus Calpurnianus Democrates is told: *Desiderium tuum cum rationibus iuris non congruit* ('Your wish is at odds with the reason of law').⁸⁷

Others are told baldly that *leges prohibent* or *leges vetant*.⁸⁸ If ever an emperor granted a favourable rescript in response to such requests, that rescript would surely be *contra ius*.⁸⁹ Thus Diocletian says:

⁷⁷ Thus 'statement of law' rescripts are not so different (from the point of view of the petitioner) from replies to other petitions that ask for specific favours or benefactions (Turpin 1991: 104–5, 115).

⁷⁸ The following examples are nearly all of *CH* date, attributable to Hermogenian.

⁷⁹ *CJ* 6. 23. 10.

⁸⁰ *CJ* 4. 44. 3, 4. 54. 7.

⁸¹ *CJ* 5. 3. 9, 8. 55. 5.

⁸² *CJ* 2. 4. 16.

⁸³ *CJ* 2. 9. 3; cf. Constantine at *CTh* 4. 16. 1, where rescripts are not accepted once a case is decided and there has been no appeal.

⁸⁴ *CJ* 8. 4. 3.

⁸⁵ *CJ* 3. 32. 12. Honoré (1983: 61) supposes the phrase *et... transtulisti* is interpolated, but this does not affect the overall meaning of the rescript.

⁸⁶ *CJ* 2. 4. 27, 2. 4. 35, 2. 12. 16, 2. 19. 10, 8. 41. 5 (Honoré, *EL*² 169 nn. 379–80).

⁸⁷ *CJ* 4. 34. 7.

⁸⁸ *CJ* 6. 2. 13, 6. 22. 2.

⁸⁹ This must be the point behind the anecdote in the *Historia Augusta* that Macrinus

Scriptura, quae nec iure nec legibus consistit, nec a nobis hanc confirmari convenit, quippe cum beneficia citra cuiusquam iniuriam petentibus decernere minime soleamus.

A document, which does not accord with law or statute, this it is not fitting for us to confirm; for we are not at all accustomed to grant benefits to petitioners without regard to the injury caused to anyone else.⁹⁰

The connection between the expected rescript and imperial *beneficia* is here made explicit.⁹¹ Despite this, the number of negative replies is very large. Many of these rescripts are sufficiently explanatory to serve as admonitory lectures. Texts attributable to Arcadius Charisius as *magister libellorum* are not reticent in adopting a highly moralizing tone.⁹² When a woman ransoms a captured girl, only to prostitute her, the imperial reply begins forthrightly: *Foedissimae mulieris nequitia permovemur* ('We are moved by the wickedness of the most vile woman.')⁹³ This reflects the attitude of the *magister* and not (or at least not just) the personal reaction of the emperor. This whole rescript is filled with words of strong moral import (*pudicitia, honestas, detestabilis, miserabilis, flagitiosus, turpitude*), though questions of violated chastity or enforced prostitution are precisely those likely to arouse indignation.⁹⁴

Other rescripts, though negative on the specific request, are sometimes helpful in pointing out that the situation is not in fact unfavourable to the petitioner. Julius receives a reply stating that his action is inappropriate in seeking to have a debt paid to him from an inheritance, before establishing his title to it. But he is reassured that his succession to the estate is clear (the debt thus being extinguished in what is in fact

(SHA, *Macr.* 13. 1) revoked all previous rescripts as being the product of the caprice of juristically ignorant emperors (see Liebs 1985a).

⁹⁰ *Cons.* 6. 17. Tellegen-Couperus (1982: 41) translates the second section (I believe incorrectly): 'we are not at all accustomed to give favours to those asking for them without any wrong having been done to them.' I feel that the injury concerned must be that likely to be caused to other parties, not any already suffered by the petitioner, and that *citra* should be taken here as 'without regard to' rather than as simply 'without' (cf. *D* 3. 6. 9). *IA* ii. 503 seems to take *citra* as meaning 'without', but reaches my interpretation by adding in *nisi* before *citra*. Cf. *CJ* 8. 48. 4: *Nec avus neptem suam liberare potestate cogitur nec in cuiusquam iniuriam beneficia tribuere moris est nostri*.

⁹¹ The Visigothic *breviarist* often glosses *rescriptum* as *beneficium* (see the *interpretationes* on *CTh* 1. 2. 4-5, 1. 2. 8-9).

⁹² The style of Charisius is further discussed in Ch. 4 Sect. i.

⁹³ *CJ* 8. 50. 7.

⁹⁴ Cf. esp. the adultery rescripts (all of appropriate date for Charisius), *CJ* 9. 9. 20. 4; e.g. *CJ* 9. 9. 24, where the petitioner is told that his intemperate lust in raping a slave-girl has not branded him with *infamia*, but has certainly damaged his reputation.

his own property).⁹⁵ Another petitioner is told that she can have no rescission on the ground of fear, but that the contract was made with her slave and so is not binding anyway.⁹⁶ Many other petitioners are told to put aside their worries or that their fears are groundless.⁹⁷

Thus the rescripts seek to reply in a manner consistent with proper law. If the petitioner is disappointed in imperial benevolence, that is of no concern to the composers of the reply.

V ADNOTATIONES

The exceptional adrogation allowed to Syra in the rescript discussed above was granted by an *adnotatio* (CJ 8. 47. 5). This appears to have been a rarer form of imperial document, giving authorization for exceptional indulgences in unusual circumstances, indeed in those where a rescript that attempted to do so by itself might be deemed *contra ius*. It always seems to be associated with a rescript, rather than existing independently. Constantine specifically ruled that *adnotationes* without an accompanying rescript were not valid.⁹⁸ An *adnotatio* by itself might well appear to go against or undermine the general law, creating a false precedent. Taken together, rescript and *adnotatio* would make clear the unusual nature of a case, restating the law but granting an exceptional indulgence. The issuing of a rescript with an *adnotatio* seems to reflect the personal decision of the emperor, in contrast to the majority of rescripts, which were effectively the creation of the *magister libellorum*.⁹⁹

There are two other surviving Diocletianic references to *adnotationes*.¹⁰⁰ Thus the emperor accepts a petition from a slave in the exceptional circumstances of her attempt to avenge her master's murder. The *adnotatio* allows for the case to be heard before the praetorian prefect and the slave to present her *libellus* of accusation in court.¹⁰¹

In the second case, a governor has forwarded from a man accused of murder a plea for mercy on the ground of accidental death. The emperors write back to the governor that their clemency has been easily

⁹⁵ CJ 4. 16. 5. ⁹⁶ CJ 2. 4. 13.

⁹⁷ CJ 4. 2. 5, 4. 19. 8, 5. 37. 15, FV 285; cf. CJ 4. 31. 11, 5. 18. 8, 6. 9. 5, 8. 53. 15, 8. 53. 18. ⁹⁸ CTh 1. 2. 1.

⁹⁹ According to the *Notitia Dignitatum* (Or. 19. 6-7 and Oc. 17. 11), *adnotationes* came under the competence of the *magister memoriae*.

¹⁰⁰ Note also a single reference to a presidial *adnotatio* at CJ 9. 51. 10. There are no surviving texts of *adnotationes*. The only possible example is the first fragmentary document in the Orcistus dossier, identified as an imperial *adnotatio* by Turpin (1988: 300-2). ¹⁰¹ CJ 1. 19. 1. See Turpin (1988: 297-8).

moved and that they have issued an *adnotatio* to free the defendant from the charge.¹⁰²

Although the third of these cases concerns a rescript to the governor, to whom the reply would have been sent in any case, it would appear in the first two instances that rescript and *adnotatio* must have been in the hands of the petitioner. I think it likely, whether or not the original continued to be retained by the imperial court in the case of most private rescripts, that these exceptional replies were given to the petitioner. This may be the explanation of a puzzling letter of 292:

Sancimus, ut authentica ipsa atque originalia rescripta et nostra manu subscripta, non exempla eorum, insinuentur.

We decree that the genuine and original rescripts signed by our hand, and not copies of them, should be archived(?).¹⁰³

The rescripts mentioned here could of course be *epistulae* to governors.¹⁰⁴ However, some writers suggest that this text introduced a change with regard to private rescripts and that the originals were now routinely given to the petitioners to be presented in court.¹⁰⁵ This could be an attempt to tighten up the use of rescripts produced in court, ensuring that they were genuine and being used for the correct case (especially as there now existed the authoritative Gregorian Code for earlier rescripts). But there is no reason to think that the letter is introducing a general change. It is more likely that this text is a rescript in answer to a specific question from the governor on the normal functioning of the system, and so, it should relate as much to the period before 292 as to the period after. What it may imply, however, is that *some* original (or imperially subscribed) rescripts were in the hands of litigants. In certain types of cases, perhaps concerning *adrogatio* or certain grants of *beneficia*, or with regard to the sorts of exceptions that might require an *adnotatio*, only the authentic subscribed rescript was valid in court.

VI THE PETITIONS

The content of petitions is almost entirely unknown. Indeed, it is the lack of a context that would have been provided by the original petition

¹⁰² *Coll.* 1. 10 = *CJ* 9. 16. 4. See Turpin (1988: 298–9).

¹⁰³ *CJ* 1. 23. 3. The meaning of 'insinuentur' is not clear. Honoré (*EL*² 47–8) suggests that it might refer to the handing over of imperial documents routed via the governor to their recipients. This may well have happened in the case of Julius Antoninus (*Coll.* 1. 10).

¹⁰⁴ Millar (1977: 221–2) interprets *rescripta* as letters.

¹⁰⁵ Simon (1977: 10–11).

that frequently renders the replies obscure. The only surviving petitions to the emperors from this period are the petition to Maximinus against the Christians from the province of Lycia and Pamphylia,¹⁰⁶ the Donatist petition to Constantine,¹⁰⁷ and the Orcistan petition to Constantine.¹⁰⁸ The first is in Greek (as usual for communication from cities in the east) and the second in Latin (as appropriate for Africans). The Orcistans from Phrygia, however, wrote their petition in Latin. None of these examples is strictly comparable to the private cases for which most of our rescripts were issued.¹⁰⁹ In which language the petitioners for code rescripts composed is never indicated. As has already been observed, Greek as well as Latin petitions would usually be answered in Latin.

The rescripts constantly refer to the original petitions in such phrases as *contra quem preces fundis, ut proponas, cum adseveres*, etc. The use of some of these phrases may reflect the choice and style of individual *magistri*, but this is difficult to establish.¹¹⁰ But it is also possible, though impossible to demonstrate, that it denotes a comment on the style of the original petition, differentiating between a long rambling protest against the petitioner's enemies and a simpler and clearer exposition of the facts. Nor, indeed, can it be known whether there was any direct echoing or borrowing of the language of the petition in the reply. The arguments used in the petition are sometimes acknowledged. Fronto is told: *Utere viri prudentissimi Papiniani responso ceterorumque, quorum precibus fecisti mentionem, sententiis* ('Use the response of that most learned man Papinian and the opinions of the others whom you mentioned in your petition').¹¹¹ It seems more likely

¹⁰⁶ *CIL* 3. 12132 (312). Similar petitions must have been received from other cities, including Nicomedia and Tyre.

¹⁰⁷ Optatus 1. 22 (313). The petition was forwarded by the proconsul of Africa.

¹⁰⁸ *FIRA*² i no. 95. The petition dates to 324/6, but the whole dossier, with both petition and imperial documents entirely in Latin, was perhaps inscribed after the latest of the documents c. 331 (as per Chastagnol 1981a; 1981b). The petition was probably forwarded by the vicar of Asiana. For the hope that governors would advance the causes of cities under their jurisdiction, see Menander Rhetor, *Treatise* II. 379. 25-6 (Russell and Wilson 1981: 98-9).

¹⁰⁹ A possible petition and rescript on a matter of inheritance may be preserved on an inscription from Corcyra (*CIL* 3. 578). See edict catalogue, no. 20.

¹¹⁰ Uses of *adseverare*, *proferri*, *adfirmare* occur in texts of both *CG* and *CH* date (listed by Honoré, *EL*² 150 nn. 74-5, 155 nn. 119-20; add *PSI* 111, dated either 287 or 290).

¹¹¹ *CJ* 5. 71. 14. For a 3rd- or 4th-cent. governor asking for citation of edicts, *senatus consulta*, and laws from Ulpian's *de Officio Proconsulis*, see Keil and Maresch (1960: 83-4). A petitioner's content would probably be much improved by access to a good lawyer. The petitioner would also require a lawyer to interpret the imperial reply, although some rescripts do attempt to explain matters as if to a layman (e.g. the answer

that petitions were not always so learned in citing opinions favourable to their case. Indeed one petitioner has said too much to his own disadvantage: *Promercalem te habuisse uxorem proponis: unde intellegis et confessionem lenocinii preces tuas continere . . .* ('You state that you treated your wife as a prostitute: from which you must realize that your petition contains an admission of pimping . . .').¹¹² Another petitioner, Gregorius, submits a second petition, complaining (presumably following an unfavourable judgement) that he omitted facts from his original *preces*.¹¹³ Sometimes the petition is extremely effective. In reference to the *preces* of Julius Antoninus the emperors say: *Qualitas precum Iuli Antonini clementiam nostram facile commovit* ('The nature of the petition of Julius Antoninus has easily stirred our clemency.')¹¹⁴

The use of conditionals in rescripts is extremely common. One reason for this may be the omission or deficient presentation of the full legal facts and context in petitions. Thus the replies cover the various possibilities hidden behind the inexactitudes of the original *libelli*. One rescript opens by saying: *Precibus tuis manifestius exprimere debueras . . .* ('You ought to have explained more clearly in your petition . . .').¹¹⁵ This lack of clarity from the petitioner is the reason why this rescript is much longer than the average for this period, needing the length in order to cover different interpretations of the situation.¹¹⁶

Sometimes, not just the petition but copies of documents are needed. Octaviana sent a copy of a will with her petition:

Unde te voluntatis non iuris quaestionem in preces tuas contulisse palam est. Cum igitur lecto testamento animadvertimus maritum tuum ex praecedente donatione dominium tibi conservasse . . .

And so it is clear that you have raised a question of intent and not law in your petition. When therefore we read the will and noticed that your husband reserved ownership to you by a previous donation . . .¹¹⁷

to a soldier at *CJ* 4. 44. 7). For a good example of a surviving petition from this period, but addressed to the *praeses Herculiae*, see *P. Oxy.* 3574 (c.314/18). The illiterate Aurelius Malchus has his case clearly set out, ending as follows: 'I request that you give me as judge against him, whomsoever your highness may approve.'

¹¹² *CJ* 4. 7. 5.

¹¹³ *CJ* 1. 22. 1.

¹¹⁴ *Coll.* 1. 10.

¹¹⁵ *CJ* 6. 26. 8 (cf. 8. 39. 2: *exprimere debueras tuis precibus utrumne . . .*).

¹¹⁶ The rescript is 19 lines long, compared to the average for the years 293–4 of 5.2 lines (Honore, *EL*² 189). For another example, see comments of Tellegen-Couperus (1984: 211) on *CJ* 7. 2. 12.

¹¹⁷ *CJ* 5. 16. 14. One wonders whether the emperor (as opposed to the *magister libellorum*) did indeed read the will (or have it read to him); cf. *CJ* 9. 9. 24, *ex actorum lectione*.

Pontius omitted to send the necessary enclosure. The reply to him gives some idea of the points at issue, but requests further information, since the document in question is needed to make a correct analysis:

Ut responsum congruum accipere possis, inserte pacti exemplum: ita enim intellegemus, utrum sola conventio fuit, an etiam Aquiliana stipulatio nec non et acceptilatio secuta fuerit: quae si subdita esse illuxerit, nullam adversariae tuae petitionem hereditatis vel in rem specialem competere palam fiet.

Enclose a copy of the contract, so that you can receive an appropriate reply: for thus we may discover, whether it was only an agreement, or whether there was also added an Aquilian stipulation plus a release: if it is apparent that this was appended, it is clear that no action for recovery of the inheritance or for any specific property lies with your opponent.¹¹⁸

The use of conditionals should also reflect not only the petitioner's failure to present his own case fully, but in addition his one-sided representation of the whole matter. The emperor is not sitting in judgement, does not have the assertions of all parties involved, and cannot presume that the petitioner is telling the truth. The rescript does not represent the emperor delivering sentence and so is conditional. Only if the facts, as found by the governor or other judge on the spot, tally with the details upon which the imperial reply was based, can the rescript be invoked effectively.¹¹⁹

The 'conditional' approach may in addition be an exercise in legal education, using the rescript to reveal the thinking behind the complications implicit in a situation. Since so many rescripts were being written for inclusion in the codes (certainly with regard to *CH*), the answers may have been composed with this future role in mind and not just for the immediate use of the petitioner. This planning for the code may also be reflected by the fact that the rescripts appear to become more concise and focused as 294 nears its end. This might imply that composition was undertaken with the intention of limiting the overall length of the code.¹²⁰ Rescripts, of course, tended in any case towards an obscure brevity. For instance, the *apokrimata* of Severus show how

¹¹⁸ *CJ* 2. 4. 15. No other rescript to Pontius survives, so we do not know if he submitted the required document to obtain a definitive second rescript, or remained satisfied with the content of the first.

¹¹⁹ The legal position set out in the rescript can be appealed against if the facts turn out to be different (Ulpian, *D* 49. 1. 1. 1).

¹²⁰ This may, of course, imply that Hermogenian shortened the original rescripts at the point of compilation, rather than at the point of composition.

brief and elusive an imperial rescript can be, where only the petitioner who had submitted the original question can have understood the reply.¹²¹ By comparison, the code rescripts are relatively informative, even if the full context is still not always recoverable and the interpretation remains obscure. Indeed, where the petitioners are not directly addressed, it may be difficult to understand the nature of their interest in the cases at issue. Despite this, many rescripts contain enough material to attempt a reconstruction of the situation.¹²²

Full explanatory detail is deficient partly, no doubt, because of shortening in the Justinianic recompilation, but also because the texts were real answers to real questions.¹²³ Whereas the jurists create fictional examples to explore points of law, with characters such as Primus, Secundus, and Tertius,¹²⁴ the rescripts are addressed to real people by name (see Chapter 5), and at least some preserve in their texts the names of the other people involved.¹²⁵

Although, therefore, the content and nature of the petitions cannot be recovered, enough hints remain as a reminder that imperial rescripts were designed for real cases and were not just theoretical exercises, even for those rescripts destined for inclusion in the codes.

¹²¹ *P. Col.* 123 lines 8–12 (discussed by Westerman and Schiller 1954: 16–17, 54–6). These replies, or at least some of them, may not be rescripts, but oral judgements (see esp. Turpin 1981).

¹²² Tellegen-Couperus (1982: 6) estimates that reasonable reconstruction can be made for half the rescripts in her sample.

¹²³ See Tellegen-Couperus (1983: 326) on *CJ* 4. 29. 19: 'This rescript can only be understood properly if one realizes that it is a piece of advice given by the jurists of the chancery to an individual who has put a concrete problem to them.'

¹²⁴ See Hermogenian at *D* 28. 5. 88 and 39. 5. 33. 3. He also follows standard juristic practice in using real but fictional names at *D* 28. 7. 12 (Publius Maevius) and 39. 5. 33. 1 (Titius).

¹²⁵ Examples of other such persons mentioned in the rescripts are as follows: Archanticus (*CJ* 1. 18. 6), Samus (1. 18. 9), Archimedorus (2. 4. 23), Iulianus (3. 34. 8), Heraclius (3. 34. 9), Syntrophus (4. 2. 9), Ion (4. 2. 12), Severus (4. 19. 15), Eutychia (4. 19. 20), Glycon (4. 19. 22), Demetrianus and Domitianus (4. 25. 5), Callistratus (4. 29. 17), Palladius (4. 30. 11), Mucianus (4. 31. 13), Tryphon and Felix (4. 35. 14), Gaudentius (4. 38. 6), Nero (4. 49. 17), Philippus (4. 51. 4), Callimachus and Acamatus (4. 64. 7), Ammia (5. 12. 19), Proculina (6. 39. 3), Amita (6. 59. 5), Arrianus and Leonides (7. 16. 27), Theodota (7. 45. 8), Philippus (8. 8. 3), Euodianus (8. 13. 20), Zenon (8. 37. 9), Iulianus (8. 38. 3), Alexander (8. 41. 5), Eucarpus (8. 41. 7), Auxanon and Ariston (8. 42. 23), Evander (8. 42. 24), Saturninus (8. 44. 25), Athenocles (8. 44. 27), Sabinus (8. 50. 11), Fusciniillus (9. 12. 4), Zenodorus (9. 35. 10), Augurius (10. 2. 3), and Titus Claudius (*Collectio*, 244–5); cf. from imperial *epistulae*: Aelius (*CJ* 7. 16. 41), Matera, Viator, and Iulianus (9. 9. 19), Alexander (9. 9. 25), Valentinus and Exuperantius (*FV* 36), and Iulius Antoninus (*Coll.* 1. 10). There are also names in some fragmentary texts (possibly rescripts and probably of tetrarchic date): Iulius Menophilus (*FV* 20), Fortunatus miles (*FV* 27), Maximus (*FV* 40), Maximus, Renatus, and Paulina (*FV* 113).

VII EMPERORS ON EMPERORS

A key element in imperial pronouncements is the manner in which the emperors relate to the past, either invoking ancient tradition or previous practice to lend legitimacy to their actions, or posing as the provident ruler identifying and rectifying deficiencies needing improvement. The emperors have cause, therefore, to call attention to the pronouncements of their imperial predecessors. Such references are present, if in no great quantity, in the rescripts of Diocletian, but are largely absent from Constantinian texts. This is, at least in part, a sign of the differing functions of private rescripts, our main Diocletianic material, and imperial letters, which predominate for Constantine. Since the private rescript is a statement of law as it stands, an explanation of earlier opinions is informative as well as supportive.

Emperors cited in private rescripts are as follows:

Trajan:

CJ 5. 75. 5 *divo Traiano parente nostro* (as author of a *senatus consultum*)

Hadrian:

CJ 8. 10. 5 *antiquato divi Hadriani edicto*

CJ 10. 40. 7 *divus Hadrianus*

Antoninus Pius:

CJ 7. 2. 12 *divus Pius Antoninus*¹²⁶

CJ 7. 20. 1 *divi Pii rescriptum*

CJ 10. 53. 4 *oratione divi Pii*

FV 314 *divus Titus Antoninus parens noster*

Marcus Aurelius:¹²⁷

CJ 2. 36. 3 *divi Marci parentis nostri*

CJ 5. 17. 5 *divus Marcus parens noster religiosissimus
imperator*

CJ 5. 62. 18 *divi Marci constitutione*

CJ 9. 41. 11¹²⁸ *divo Marco*

Septimius Severus:

¹²⁶ On the identity of this constitution of Pius, see Tellegen-Couperus (1984: 212–13).

¹²⁷ *SHA*, Marcus 19. 12 refers to Diocletian's reverence for Marcus, but as Syme (1980: 87) comments on this passage, 'what happens to be correct is not thereby proved authentic'. Honoré (1987: 168 n. 196) suggests that the *Historia Augusta* derived the view in this passage precisely from a knowledge of Diocletian's constitutions in *CH*.

¹²⁸ This text also cites Ulpian (cf. *D* 50. 2. 2. 2) in a fulsome manner, attributed by Honoré (*EL*² 156, 161) to Charisius. Compare Charisius on Modestinus at *D* 50. 4. 18. 26.

<i>CJ</i> 5. 71. 9	<i>divi Severi orationem</i> ¹²⁹
<i>FV</i> 276	<i>oratione divi Severi</i>
Caracalla:	
<i>CJ</i> 6. 49. 4	<i>divo Antonino parente nostro</i> ¹³⁰
Aurelian:	
<i>CJ</i> 12. 62. 4	<i>divus Aurelianus</i> ¹³¹

In addition to these instances, one letter of Diocletian refers to *divus Claudius consultissimus princeps parens noster*,¹³² which must be Claudius Gothicus.¹³³

The citation of emperors from Trajan onwards contrasts with another set of contemporary attitudes to the past in an imperial context, namely in the panegyrics, where Trajan occupies the upper chronological limit, with few later references. Here the emperors of the legal citations barely appear, with mythological, Greek, and Republican Roman figures used as *exempla* instead.¹³⁴ Antoninus Pius is only mentioned when compared unfavourably with Constantius.¹³⁵

More general citations of previous emperors are as follows:

<i>CJ</i> 2. 3. 19	<i>principalium constitutionum prompto favore firmatur.</i>
<i>CJ</i> 5. 24. 1	<i>neque nostra neque divorum parentum nostrorum ulla constitutione caveatur.</i> ¹³⁶
<i>CJ</i> 7. 13. 1	<i>iam pridem senatus consulto et statutis principum . . . sancitum est.</i>
<i>CJ</i> 7. 18. 2	<i>retro principes . . . decreverunt.</i>
<i>CJ</i> 7. 36. 2	<i>tam rescriptis nostris quam priorum principum statutis probatum sit.</i>

¹²⁹ This same measure is also referred to in the previous constitution, dated only two days earlier (*CJ* 5. 71. 8), but in its form as a *senatus consultum* rather than the imperial *oratio* (as noted by Talbert 1984: 295 n. 33). Overall this measure is cited by emperors eleven times as the *senatus consultum* (seven of these Diocletianic) and only twice as the imperial *oratio* (ibid. 517 n. H).

¹³⁰ This probably refers to Caracalla, as presumed by Honoré (*EL*¹ 45) and argued by Kehoe and Peachin (1991: 159). Müller-Eiselt (1982: 22 n. 72) prevaricates, giving various views, some in favour of Pius (cf. *CJ* 6. 26. 1), others for Caracalla.

¹³¹ Some readings give Trajan, but the subject-matter *de primipilo* can only belong to the 3rd cent. and after.

¹³² *CJ* 2. 13. 1 (letter catalogue, no. 22).
¹³³ Only one constitution of Gothicus survives in Justinian's Code (3. 34. 6), but Eutropius 9. 11. 2 calls him *iusti tenax*.

¹³⁴ See Nixon (1990: 5–6) and his table of citations (pp. 30–3).

¹³⁵ *Pan. Lat.* 8(5). 14. 2–3.

¹³⁶ This rescript provides for the judge to decide whether the custody of children following divorce is to be decided by sex, although this was not covered under previous constitutions. See Treggiari (1991: 469).

<i>CJ</i> 7. 39. 1	<i>secundum principalium statutorum tenorem.</i>
<i>CJ</i> 7. 64. 7	<i>a divis principibus . . . decretum est.</i>
<i>CJ</i> 7. 71. 4	<i>beneficium constitutionibus divorum nostrorum parentum ad provincias porrectum esse.</i>
<i>CJ</i> 8. 54. 3	<i>benigna iuris interpretatione divi principes . . . admiserint.</i> ¹³⁷
<i>CJ</i> 9. 2. 11	<i>salubriter statutis principum parentum nostrorum . . . praescriptum est.</i> ¹³⁸
<i>CJ</i> 9. 41. 10	<i>constitutionibus principum est permissum.</i>
<i>CJ</i> 10. 1. 4	<i>a principibus salubriter statutum est.</i> ¹³⁹
<i>CJ</i> 10. 52. 5	<i>divi parentes nostri constituerunt.</i>
<i>FV</i> 270	<i>sacris constitutionibus parentum nostrorum evidenter continetur.</i>
<i>FV</i> 277	<i>iuxta divorum principum constitutiones.</i>
<i>FV</i> 280	<i>iam dudum divorum principum stat[utis] esse prov[isum].</i> ¹⁴⁰
<i>Chr.</i> ii no. 381	<i>divorum parentorum (sic) Augg. constitutiones . . . concedunt.</i>

Other references include *plerisque constitutionibus*,¹⁴¹ and, with the relatively rare use of the word *sacer*¹⁴² (not necessarily denoting former emperors), there are *sacrae constitutiones*¹⁴³ and *multae sacrae constitutiones*.¹⁴⁴ The frequency with which a point has been made in the past is also stated by the employment of such phrases as *saepe rescriptum est*,¹⁴⁵ *saepe constitutum est*,¹⁴⁶ and *saepe statutum est*.¹⁴⁷ Indeed, the reliance upon a series of consistent rescripts rather than a single instance seems to mark a difference between the rescripts and the juristic writings.¹⁴⁸

The differing references are scattered throughout the reign and are

¹³⁷ Most of this phrase is lost in the fragmentary state of the parallel text *FV* 286.

¹³⁸ This example is from an *epistula* of 292.

¹³⁹ The use of *a principibus* at *CJ* 7. 62. 7 is omitted here, not being a citation of precedent.

¹⁴⁰ This phrase does not appear in the parallel *CJ* text (3. 29. 7).

¹⁴¹ *FV* 271.

¹⁴² The use of the adjective *sacer* in Diocletian's constitutions is rare. Beyond those cited in the text, other examples are *sacro comitatu* (*CJ* 7. 67. 1) and the non-imperial *manentes in sacris* (*CJ* 6. 55. 3). Note that the superlative occurs in connection with a temple (*CJ* 4. 32. 19, *sacratissimas aedes*). *Divinus* is also rare (*divino beneficio*, *CJ* 5. 6. 7), but note literal rather than imperial use at *PE* pr. 78-9.

¹⁴³ *CJ* 2. 42. 3, 4. 32. 20, 10. 47. 2.

¹⁴⁴ *CJ* 7. 43. 11.

¹⁴⁵ *CJ* 3. 36. 18; cf. 5. 14. 6, *saepissime sit responsum*.

¹⁴⁶ *CJ* 2. 5. 1, 4. 44. 3, 7. 45. 7, 7. 56. 4, 7. 60. 1, 8. 37. 5, 10. 53. 5, *Chr.* ii no. 380.

¹⁴⁷ *CJ* 9. 25. 1.

¹⁴⁸ Honoré, *EL*² 42.

not confined to any one tenure of the post *magister libellorum*, though some usages may occur more at one time than another.¹⁴⁹ Citations are therefore a general mark of the rescripts, not of one official writing them.¹⁵⁰

The manner of reference is in general simple and functional. Only Marcus Aurelius and Claudius II each receive a single superlative attributing qualities to them.¹⁵¹ But not all debts to previous rulers are acknowledged. Thus, Diocletian rebukes a philosopher for trying to avoid *munera*:

Professio et desiderium tuum inter se discrepant. nam cum philosophum te esse proponas, vinceris avaritiae caecitate et onera quae patrimonio tuo iniunguntur solus recusare conaris.

Your calling and desire are inconsistent. For, although you state that you are a philosopher, you are overcome by the blindness of greed and you alone attempt to refuse the burdens attached to your patrimony.¹⁵²

This text can hardly have been written in ignorance of the very similar sentiments of Antoninus Pius:

those (philosophers) who are outstandingly rich will voluntarily offer the advantages of their wealth to their ancestral cities; were they to be niggardly with their property, they will from this very fact be already exposed as no philosophers.¹⁵³

Of the remaining emperors of our period, only two others cited their predecessors by name, though not in private rescripts.

Maximinus cites the still living Diocletian when abolishing the city poll-tax.¹⁵⁴ Such a citation of the living is unique, which is not surprising, since living ex-emperors were a rare phenomenon. This citation is positive, as Maximinus was returning to a more lenient taxation policy

¹⁴⁹ e.g. *saepe constitutum est* mostly occurs in 293–4 (CH). See Honoré, *EL*² 170 n. 394. It is also employed by Hermogenian at *D* 40. 1. 24. 1 and 49. 14. 46. 5.

¹⁵⁰ Citations of emperors by *magistri libellorum* in their own juristic writings are as follows: Vespasian and Hadrian (*D* 50. 4. 18. 30) and Pius (*D* 48. 18. 10. *pr*) by Charisius (Gualandi 1963: i. 320–1); Pius (*D* 37. 5. 23) and Severus (*D* 48. 4. 9) by Hermogenian (ibid. 351–2). For a survey of the citation by Ulpian and the jurists of both emperors and other jurists, see Honoré (1982: 235–42).

¹⁵¹ The adjective *consultissimus* (i.e. 'juristically learned') is only used of Claudius II in the example above and of Marcus by Gordian III at *CJ* 7. 2. 6.

¹⁵² *CJ* 10. 42. 6.

¹⁵³ *D* 27. 1. 6. 7. The trans. is from Oliver (1989: 589). Cf. Papinian at *D* 1. 5. 8. 4.

¹⁵⁴ *CTh* 13. 10. 2. See letter catalogue, no. 56.

in line with the usage under Diocletian, as opposed to that of Galerius (who is not named).¹⁵⁵ However, he also uses Diocletian (and Maximian) when he attempts to distance himself from the anti-Christian persecution in pronouncements of apologia. Thus he claims that the former emperors are responsible for the persecution and that he himself became embroiled in the affair as a victim of circumstances created before his accession. Twice he mentions Diocletian and Maximian by name, referring to the initiation of the persecution.¹⁵⁶ He also claims that he was compelled to reply favourably to anti-Christian petitions from Nicomedia and other cities, because he had to follow the precedent of *οἱ ἀρχαῖοι αὐτοκράτορες πάντες*.¹⁵⁷

Constantine cites Antoninus Pius and Aurelian each once.¹⁵⁸ Indeed, pre-Diocletianic emperors are only cited on another three occasions in the entire Theodosian Code.¹⁵⁹ Constantine does on occasion refer to former emperors in general rather than in particular. Thus he cites *statuta principum priorum*,¹⁶⁰ *veteres retro principes*,¹⁶¹ *retro principum rescripta*,¹⁶² *rescripta divorum*,¹⁶³ *beneficia divorum retro principum*.¹⁶⁴

The other manner in which he refers to his predecessors is in relation to persecution and tyranny. In these cases, he tends to preserve their anonymity, a practice that Eusebius also employs.¹⁶⁵ Thus at the end of the *Oratio ad Sanctos*, Constantine mentions Diocletian by name, but not a second ruler to whom he refers. This has made the identification

¹⁵⁵ For the census under Galerius, see Lact. *DMP* 23. 1–9 and 26. 2 (cf. 36. 1 for its abolition by Maximinus in Bithynia).

¹⁵⁶ Eus. *HE* 9. 9a. 1 and 9. 10. 8. In the first of these, Maximinus concedes that Diocletian and Maximian acted rightly (*ὀρθῶς*), but the general purport of the passages is to shift responsibility away from himself.

¹⁵⁷ Eus. *HE* 9. 9a. 6. The pressure to follow earlier emperors in granting or confirming privileges is very great. Thus, at *Chr.* ii no. 381, Diocletian opens by stressing his desire to uphold privileges granted by previous emperors to athletes, before he goes on to explain why he also feels it necessary to establish more limiting criteria for these privileges.

¹⁵⁸ Antoninus Pius (*CTh* 8. 12. 4); Aurelian (*CJ* 11. 59. 1). This second text lacks a date but is followed by a constitution of Dec. 337 and so is probably Constantinian.

¹⁵⁹ Hadrian (*CTh* 4. 4. 7, 11. 36. 26); Antoninus Pius (9. 19. 4).

¹⁶⁰ *CTh* 5. 10. 1; cf. *statuta parentum nostrorum* in the *edictum de Accusationibus*, *FIRA*² i no. 94 lines 23–4 (Licinius or Constantine).

¹⁶¹ *CTh* 9. 7. 2.
¹⁶² *CTh* 11. 39. 1 (a constitution improving on earlier legislation); *FV* 274 (one of Constantine's few private rescripts).

¹⁶³ *CTh* 12. 11. 1.

¹⁶⁴ *CTh* 13. 3. 3.

¹⁶⁵ Eusebius frequently employs periphrases to denote particular emperors. For instance, in the *Vita Constantini*, only Licinius and Maxentius of the persecuting emperors are identified by name. See R. T. Ridley (1980).

of which emperor he means a matter of contention.¹⁶⁶ Of six laws rescinding tyrants' acts, only one mentions the ruler by name.¹⁶⁷

It is instructive to compare the practice of Diocletian and Constantine with the number of citations that they themselves earn from later emperors. Apart from the reference in the letter of Maximinus given above, Diocletian is cited only once more in the Theodosian Code, as *divus Diocletianus*, by Valentinian and Valens.¹⁶⁸ The only other instance is a reference by Justinian, where he is named as *Diocletianus* with no qualification.¹⁶⁹

By contrast, Constantine is cited with some frequency (even if in some cases this is to modify or revoke his provisions, as done by Julian). He is mentioned forty-four times in the Theodosian Code,¹⁷⁰ with almost another score of references in later texts of the Justinian Code and the post-Theodosian and Justinianic Novels.¹⁷¹ This importance of Constantine as a precedent for his successors, particularly as the first Christian emperor, shows why it was so appropriate for

¹⁶⁶ *Oratio* 25 (for problems of dating, etc., see Ch. 10 Sect. iii). The previous chapter, however, names three pre-tetrarchic persecutors, Decius, Valerian, and Aurelian. Note also the avoidance of names in the Constantinian texts preserved in Eusebius (e.g. VC 2. 27, 49, 51, 66).

¹⁶⁷ *CTh* 15. 14. 1 (Licinius). Note that Maxentius is anonymous as the tyrant in the inscription on the Arch of Constantine (*CIL* 6. 1139).

¹⁶⁸ *CTh* 8. 4. 11.

¹⁶⁹ Justinian, *Nov.* 22. 19. This also mentions Marcus and is clearly derived from Diocletian's rescript *CJ* 5. 17. 5. Justinian refers to Marcus as *philosophissimus*, altering the *religiosissimus* of the Diocletianic original, perhaps considering the adjective no longer suitable for a non-Christian emperor (though it was not edited out of Diocletian's text by the *CJ* compilers). *Philosophissimus* is, in any case, the most common appellation given to Marcus by Justinian (*CJ* 5. 17. 12, *Nov.* 60. 1 and 108. *pr.* cf. *princeps philosophiae plenus* in *CJ* 6. 35. 11. 2). Elsewhere Justinian calls Marcus *prudenterissimus* and even *sanctissimus* (*CJ* 6. 35. 11. 2–3). A respect for philosophy and Marcus is probably attributable to the background of Tribonian, rather than to that of the narrowly Christian Justinian (Lanata 1984: 234–45; Honoré 1975: 122–3).

¹⁷⁰ See the list and comments of Volterra (1981: 103–11).

¹⁷¹ References to Constantine are as follows: Constantius II, *CTh* 3. 5. 1, 6. 4. 7, 8. 12. 7, 9. 24. 2, 11. 30. 24, 11. 30. 28; Constans, *CTh* 3. 5. 7, 8. 12. 6, 9. 34. 5, 10. 14. 2, 16. 10. 2; Julian, *CTh* 2. 5. 2, 3. 1. 3; Valentinian I, *CTh* 4. 6. 4, 6. 4. 17–18, 7. 13. 4, 11. 29. 5, 11. 32. 1, 12. 12. 4, 13. 5. 13, 14. 3. 12, 14. 4. 4, *CJ* 7. 39. 2; Valens, *CTh* 5. 1. 2, 16. 6. 2; Gratian, *CTh* 13. 5. 16, 13. 9. 3; Valentinian II, *CTh* 1. 6. 8; Theodosius I, *CTh* 14. 17. 9–10, 14. 17. 12; Arcadius, *CTh* 10. 10. 24, 16. 8. 13; Honorius, *CTh* 4. 4. 3, 4. 6. 5, 4. 15. 1, 13. 5. 26; Theodosius II, *CTh* 1. 1. 5–6, 6. 2. 26, 14. 16. 2, 16. 5. 66, 16. 8. 22, *Nov.* 5. 1; Valentinian III, *CTh* 5. 1. 7, 8. 18. 9; Marcian, *Nov.* 4; Anthemius, *Nov.* 1, 3; Leo, *CJ* 5. 30. 3; Zeno, *CJ* 5. 27. 5; Justinian, *CJ* 5. 70. 7. 3; 6. 61. 6. 3; 9. 13. 1. 1d, 4; *Nov.* 7. *pr.* 22. 13, 14; 28. 1; 43. *pr.* 59. *pr.* 78. 5; 89. *pr.* 15; 107. *pr.* 117. 6; 134. 10. One text of Constantius and Constans (*CTh* 8. 13. 2) refers to *avi nostri*, which Volterra (1981: 102) takes to mean either Constantine or unidentified predecessors; strictly, it could refer to Constantius I and Maximian.

Theodosius II to choose him as the chronological starting-point for the constitutions in his code.¹⁷²

VIII *VETUS IUS*

A sense of precedent goes beyond the citation of former emperors. All law builds on what has gone before. In addition to imperial constitutions, there exists a panoply of *leges* and *senatus consulta*, not to mention the juristic writings, all of which earn a place in the texts of our period. Indeed, over twenty titles in the Justinian Code deal specifically with various *leges* and *senatus consulta*.¹⁷³

Papinian, Paul, and Ulpian are each cited by name once by Diocletian, though there may be a good deal of unacknowledged debt to their work.¹⁷⁴ Even the *lex duodecim tabularum* is cited five times by Diocletian.¹⁷⁵ Constantine legislated to remove some of the conflict between the differing opinions of the jurists, by ordering the invalidation of the *notae* of Paul and Ulpian upon Papinian.¹⁷⁶ But he also confirmed the validity of the Sentences of Paul when cited in court.¹⁷⁷

This whole array can best be described as *vetus ius*.¹⁷⁸ This term is used a number of times in our constitutions. Its exact meaning is not always clear. In one letter, Constantine directs that action is to be taken *secundum ius vetus et rescripta divorum constitutionesque nostras*, where imperial constitutions seem additional to existing law.¹⁷⁹ But in the rescission of Licinius' acts, Constantine directs only that

¹⁷² Ibid. 112. There are no constitutions in the codes for the period 306–12 (death of Constantius I to overthrow of Maxentius).

¹⁷³ For a detailed list of *senatus consulta* and their citation in the legal sources, see Talbert (1984: 435–58).

¹⁷⁴ *CJ* 5. 71. 14, 9. 22. 11, and 9. 41. 11; also the citation of *responsis prudentum* (*Cons.* 5. 7) and *veteribus iuris auctoribus* (*CJ* 5. 17. 3). The phrase *saepissime sit responsum* (*CJ* 5. 14. 6) may refer to the imperial rescripts rather than *responsa prudentum*. The mention of Papinian in 5. 71. 14 repeats the precedents used as arguments in the original petition. For unacknowledged references, see Taubenschlag (1923: 144 nn. 2–9, with correction by Liebs 1983: 505 n. 149) and Honoré (*EL*¹ 114–15; *EL*² 154). Tellegen-Couperus (1983: 321, 327) supposes consultation of earlier juristic writings by the imperial jurists.

¹⁷⁵ *CJ* 2. 3. 26, 4. 16. 7, 5. 30. 1, 6. 55. 3, 6. 55. 4. The Twelve Tables only appear once in *CTh* at 9. 42. 9 (380).

¹⁷⁶ *CTh* 1. 4. 2. Apart from these cases, only one jurist is cited in *CTh* over the next century (Scaevola, *CTh* 4. 4. 3, 396), until the Law of Citations in 426 (Volterra 1983: 229). But note the positive attitude to the jurists taken by the *Historia Augusta* (Honoré 1987: 167–8 nn. 193–7; Honoré 1991b).

¹⁷⁷ The phrase *antiquum ius* is also used; e.g. *CTh* 4. 12. 3 and *edictum de Accusationibus* (*FIRA*² i no. 94 lines 29–30).

¹⁷⁸ *CTh* 12. 11. 1.

vetus ius and his own constitutions are to be followed.¹⁸⁰ Here, *vetus ius* seems to embrace everything before Constantine and Licinius. It is however a useful and flexible concept, providing both the background of hallowed precedent for the actions of a current ruler, as well as a stable structure beyond the contamination of tyrants. But, as will become apparent, it is not an inviolable shibboleth.

Diocletian cites *vetus ius* once in a rescript,¹⁸¹ where the strict reply, based on *veteris iuris auctoritate*, is modified by the *benigna iuris interpretatione* of former emperors. In a letter of 295, the shortcomings of existing law are acknowledged and improvements made:

Ita nobis pudor cordi est, ut removeamus prisci iuris ambages . . . Indignum est enim, ut ultionem pudoris praestigia versuti iuris excludant.

We have chastity so much at heart, as to remove the obscurity of previous law . . . For it is not proper that legal cunning and trickery should prevent retribution for violated chastity.¹⁸²

There are no such reservations in the Damascus incest edict, where *vetus ius* appears alongside other phrases which suffuse the whole edict with the sanctity of ancient Roman practice. Indeed, such conservatism is a mark of much Diocletianic legislation.¹⁸³ In imperial eyes, it is the newness of Manichaeism that is one of its worst defects. Thus Diocletian says, *neque reprehendi a nova vetus religio deberet*, and criticizes those who *novellas et inauditas sectas veterioribus religionibus obponunt*.¹⁸⁴ This too is an avenue of attack against Christianity. Galerius states that he wanted to set everything to rights, *iuxta leges veteres et publicam disciplinam Romanorum*, and recall Christians from their desertion of their parents' religion.¹⁸⁵ Eusebius is therefore careful to refute the charge of newness and highlight the antiquity of Christianity.¹⁸⁶

¹⁸⁰ CTh 15. 14. 1.

¹⁸¹ CJ 8. 54. 3 (= FV 286). Note also *veteribus iuris auctoribus* (CJ 5. 17. 3). For *vetus mos* and *vetus forma atque sollemnis mos* in relation to water rights, see CJ 3. 34. 7.

¹⁸² CJ 9. 9. 27. This letter (see catalogue, no. 29) appears to represent a view at odds with the conservatism of other Diocletianic lawyer-officials, Gregorius and Hermogenian (Honoré, *EL*² 184). Indeed, it may have been composed by Maximian's *magister epistularum* at the same time as Hermogenian was *magister libellorum* in the west.

¹⁸³ Much of this occurs in constitutions ascribed to Diocletian's *magister libellorum* (no. 17/18 = Gregorius?), but it also seems part of the outlook of the Diocletianic regime in general. See Ch. 4 Sect. i and iii.

¹⁸⁴ Lact. *DMP* 34. 1.

¹⁸⁵ *Coll.* 15. 3.

¹⁸⁶ Eusebius *HE* 1. 2. 1; Barnes, *CE* 126–7. Another contemporary approach to dealing with the charge of newness is that of Arnobius (2. 71), who argues that everything had to be new at one time.

As a Christian and emperor, there is a tension in Constantine regarding the old and the new. Constantine can still invoke *vetus ius* as something to be followed,¹⁸⁷ but as under Diocletian, there is considerable room for improvement. Thus *veteris iuris definitio et retro principum rescripta* can be modified by the emperor out of consideration for equity and justice.¹⁸⁸ Indeed, the emperor can say quite explicitly that *sententia veterum displiceat*.¹⁸⁹ Nazarius in his panegyric speaks of the benefits of Constantine's new legislation:

Novae leges regendis moribus et frangendis vitiis constitutae; veterum calumniosae ambages recisae captandae simplicitatis laqueos perdidierunt.

New laws have been established for governing morals and destroying vice; the deceiving obscurities of the ancients have been cut back and have lost their traps for ensnaring honesty.¹⁹⁰

But there is a Christian aspect. For Lactantius, a reference to a classical Roman lawyer (Ulpian) is made in connection with heavy penalties against Christians, and he calls former emperors *veteres tyranni*.¹⁹¹ For Constantine, the *Lex Papia Poppaea* of AD 9 is *vetus ius*. In 307, the panegyrist before Constantine and Maximian could talk of this sort of law as follows: *leges eae quae multa caelibes notaverunt, parentes praemiis honorarunt, vere dicuntur esse fundamenta reipublicae* ('These laws, which censure the unmarried through financial loss, and honour parents with rewards, are truly described as the foundation of the state').¹⁹² But now, in 320, the law needs modification, as out of tune with new Christian moral imperatives. Thus the disabilities imposed on celibates are annulled, the very concept of childlessness almost ceasing to exist (*nec vero quisquam orbis habeatur*).¹⁹³ The problem of fiscal delators is thus also reduced.¹⁹⁴

Referring to this legislation, Eusebius describes how Constantine

¹⁸⁷ In addition to the two instances already mentioned, *vetus ius* as still valid appears at *CTh* 4. 12. 3 (see below), 9. 1. 5, 9. 24. 1. Note also *prisca legum aequitate* in a private rescript (*FV* 273). ¹⁸⁸ *CTh* 11. 39. 1.

¹⁸⁹ *CTh* 3. 5. 2. ¹⁹⁰ *Pan. Lat.* 4(10). 38. 4.

¹⁹¹ Lact. *DI* 5. 11. 19–5. 12. 1. See Amarelli (1978: 134–45). Citations of Ulpian by Lactantius are listed in Gaudemet (1976: 86). ¹⁹² *Pan. Lat.* 7(6). 2. 4.

¹⁹³ *CTh* 8. 16. 1. Even so, much of the Augustan law remained in force and is mentioned in later texts: *CTh* 8. 17. 2 (410), 9. 42. 9. 1 (380). Note that attempts to moderate the law were made as early as AD 20 (Tacitus, *Annales* 3. 25–8), and again under Severus (Tertullian, *Apologeticus* 4. 8).

¹⁹⁴ See Spagnuolo Vigorita (1988). Carinus and Numerian consider that fiscal delators alone are truly deplorable (*exsecrabiles nuntiatores*, *CJ* 10. 11. 4), but Constantine takes action against delators in general on other occasions.

rectified the defects of the original law, using correct reason to make it ἐν τὸ ὁσιώτερον. Eusebius brings out (although he exaggerates, and, some would say, even invents) the Christian attitude underlying the measure, extolling the continence of philosophers and holy women.¹⁹⁵ This measure regarding the *lex Papia Poppaea* is however only one part of a larger edict *ad populum* concerned with marriage and testamentary law. Eusebius continues by describing another improvement which abolished the formal requirements for the making of valid testamentary dispositions, a change also attested in the surviving laws and part of the larger edict.¹⁹⁶ Even here, however, former rules are not entirely superseded. Constantine speaks of *testatio . . . statutis prisco iure temporibus coartanda*.¹⁹⁷ And elsewhere in the same edict, Constantine reiterates but also mitigates *vetus ius* with respect to the *Senatus Consultum Claudianum*.¹⁹⁸ Indeed, later in the same year, he makes an exception from his ban over the consultation of soothsayers, by allowing it for cases where public buildings are struck by lightning, *retento more veteris observantiae*.¹⁹⁹

It is instructive to note, by contrast, that Licinius is accused by Eusebius of overturning the ancient and wisely established laws of the Romans in relation to marriage and the dying (testamentary rules?), and of bringing in their place laws that were lawless and contrary to law.²⁰⁰ The details of these regulations are unknown, but it is remarkable to

¹⁹⁵ Eus. VC 4. 26. 2-4. Sozomen, HE 1. 9 discusses this reform in a similar vein. However, he also states that Constantine gave additional testamentary privileges to those embracing a life of continence and virginity, and supports Constantine's action by citing ancient Roman practice in regard to the Vestal Virgins. Other motivations may also have been important. Removal of legal disabilities would bring the church considerable material benefit from the properties of holy men and women. In the next year (321), Constantine gave complete freedom for anyone to leave property to the church (CTh 16. 2. 4). Even so, the real beneficiaries from the reform of the *Lex Papia Poppaea* were probably the senatorial aristocracy of Rome, and they may have been the intended target audience, with Christian motivation being supplemental or incidental (thus Evans-Grubbs 1993a: 123-6). For Eusebian misrepresentation or misunderstanding of Constantinian texts, see Warmington (1993). Note at p. 205: 'The bishop of Caesarea appears as a careless and perhaps tendentious reporter of recent legislation, even when it seems he had a text.'

¹⁹⁶ Eus. VC 4. 26. 5-6. The provision is given at CJ 6. 23. 15. For details of the complete edict, see edict catalogue, no. 47.

¹⁹⁷ CJ 6. 9. 9.
¹⁹⁸ CTh 4. 12. 3. The law is modified for women who cohabit with fiscal slaves (Evans-Grubbs 1993b: 141-2).

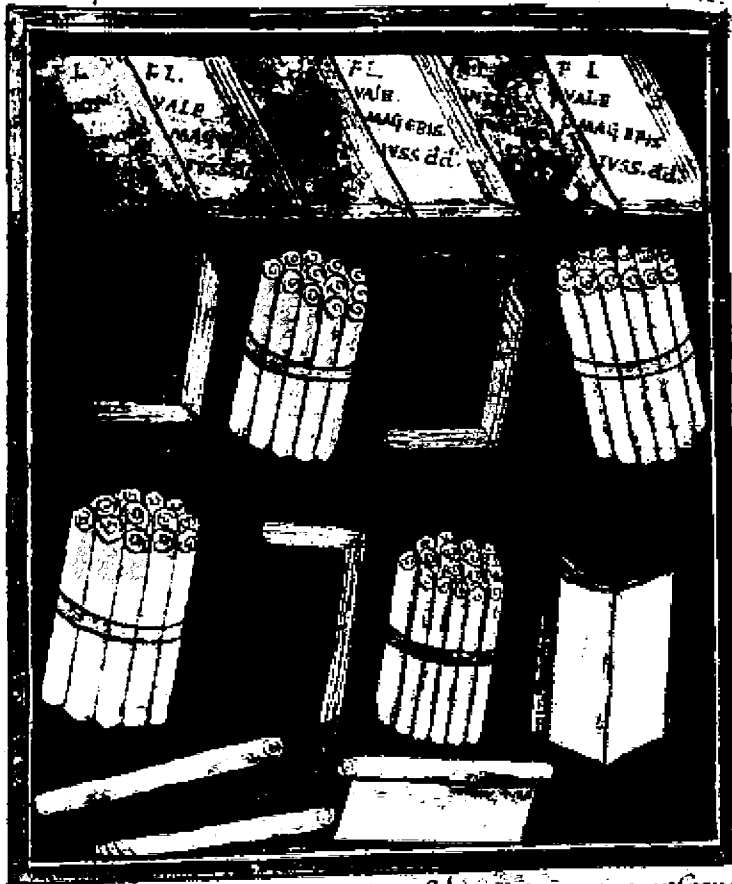
¹⁹⁹ CTh 16. 10. 1. Compare this to his strict banning of private consultations (CTh 9. 16. 1-2).

²⁰⁰ Eus. HE 10. 8. 12 = VC 1. 55. 1-3. The points made here are already noted by Corcoran (1993: 102).

find such criticisms directed at Licinius for apparently enacting new legislation on precisely the same topics and at the same time as Constantine. Eusebius does not allude to any connection between the two sets of laws. Thus, it is impossible to know whether either emperor was responding in some way to the other's legislation. Eusebius had no difficulty in adopting a different attitude towards 'ancient law' according to which emperor was tampering with it.

Thus *vetus ius* is a useful concept to employ, whether an emperor cites it as precedent, claims to improve upon it, or is criticized for contravening it. In the rescripts, emperors are seen to operate within the existing framework of law, following juristic practice. More innovative legislation is bolder, asserting not only a debt to the past, but vigilance for continued improvement, and a reduction in ambiguity and the quibbles of jurists.

MAGISTER SCRINIORVM.



Magister in omni annotatione confidat & emitte respond
 camen et precibus
 Magister eptay legationes nuntii & consolatione & preces tractat.
 Magister libelloz cognitiones et preces tractat.

2 Illustration from a 15th-cent. copy of the *Notitia Dignitatum* (Oc. ch. 17) for the *magistri scriniorum*, depicting their codicils of office and various scrolls and codices

The Palatine Secretaries

I THE HONORÉ APPROACH

It is the achievement of Tony Honoré to have pioneered a new approach to the imperial constitutions, seeking to treat them not as uniform chancery products issued in the name of an imperial college, but as literary texts produced by individual authors.¹ His argument is that imperial laws and rescripts (despite later editing) can be read with an eye to style and attitude, and that doing so with the texts assembled into a chronological palingenesia enables the detection of stylistic changes over time. Constitutions, therefore, can be divided not only by the reigns of emperors, but also by the succession in office of the ultimate authors of imperial pronouncements, the palatine secretaries. Thus a form of anonymous stylistic *fasti* can be created for certain offices, followed by identification in some cases with appropriate figures known from other evidence.

For the third-century private rescripts, this has led to a proposed list of about twenty *a libellis/magistri libellorum*, for seven of whom named identifications are suggested.² For the fourth to sixth centuries, the texts are associated with the quaestors of the sacred palace, many more of whom are known by name.³

This stylistic analysis is based upon not only variations in vocabulary,

¹ For positive responses to the first edition of *Emperors and Lawyers*, see Liebs (1983) and Millar (1986). Note that the legal writings are given due prominence in the recent vol. of the *Handbuch der lateinische Literatur der Antike*, covering the period 284–374 (Liebs 1989).

² First piloted in Honoré (1979), followed by *EL*¹ (1981) and much revised in *EL*² (1994).

³ The various quaestors studied are as follows: Eupraxius, Ausonius, and Nicomachus Flavianus (Honoré 1986a: 144–56, 189–222); Ausonius (1984a); Nicomachus Flavianus (1989a); Antiochus Chuzon and the quaestors of Theodosius II (1993); Tribonian and the quaestors of the period 500–55 (1978, chs. 3, 4, and 8). Procopius, *Historia Arcana* 14. 2–3 criticizes Justinian for composing his own laws in an unpolished manner instead of leaving this task to the quaestor. Stylistic investigation suggests that Justinian did indeed compose some laws, but they are rare exceptions (e.g. *CJ* 1. 27. 1–2). See Honoré (1975; 1978: 24–6).

but also differing modes of approach, exposition, and argument used in the texts and even the length of the surviving extracts.⁴ The exact number of occurrences of a word or phrase needed in order to be counted as significant as a mark of style varies between tenures, mainly because the predominance of rescripts from the years 293–4 creates a chronic imbalance in the material.⁵ Even rarely used words and *hapax legomena* are marshalled in the evidence, since, although of little value in isolation, a preference for rare or unusual words can itself be a mark of style.

Stylistic criteria are rather difficult to use and some scholars have rejected the entire concept.⁶ Honoré himself provides words of warning:

They [the guidelines for identifying marks of style] offer no more than a useful check on unbridled speculation. In the end what is decisive in allotting rescripts to authors is an ear and eye for language combined with a sound knowledge of the texts in their chronological sequence.⁷

And elsewhere:

what is called for is scholarly judgement which takes account of but is not dominated by the stylometric aspect.⁸

No one who has read the rescripts of Diocletian in *CJ*, even in code order, can have failed to mark those which were more rhetorical and used vivid and emotive vocabulary. When the dates of these are checked, they mostly occur in the years 290–1. That these texts should provide the basis for identifying a *magister's* period of office is highly persuasive, indeed the best illustration of the method at work. Thus the secretary of this period (no. 19), in a manner quite unlike those composing rescripts during the rest of Diocletian's reign, likes sonorous phrases and unusual words, and sees legal problems in moral terms, using the language of vice and virtue; e.g. *turpis lucri cupiditatem; foedissimae mulieris nequitiae; odium detestabilis quaestus; libidine intemperatae cupiditatis*.⁹

By itself, identification of such periods in office for imperial secretaries based upon verbal style can show continuity in office between

⁴ See Honoré, *EL*² 56–70, which answers many of the criticisms of the first edn.

⁵ These criteria are discussed at *EL*² 143–5. Statistical methods cannot be applied to texts of such uneven distribution and unknown authorship.

⁶ Most emphatically Watson (1982). ⁷ *EL*² 143.

⁸ *EL*² 69. Note also his citation of Kenny's view: 'In the context of authorship, stylometric evidence should not be regarded as superseding or trumping external and internal evidence of a more traditional kind.' ⁹ Honoré, *EL*¹ 115–19; *EL*² 156–62.

reigns¹⁰ and changes of office within reigns. But it is also possible to analyse the approach and attitude of the author, and even on occasion put a name to an otherwise faceless office-holder. It is this in particular which makes Honoré's analysis of the reign of Diocletian so convincing. He draws a picture of the emperor directing legal policy, yet served by three very different lawyers who are no mere ciphers for the implementation of the imperial will.

The identification of *magistri libellorum* with known persons is possible because of the juristic writings in the *Digest*, which give comparative material. Thus a connection between the author of the *Codex Hermogenianus* and the jurist Hermogenian was suggested on stylistic grounds long ago and has been reinforced by Honoré's work, identifying him as *magister* no. 20.¹¹ The connection between Arcadius Charisius (known to have been *magister libellorum*) and the *magister* (no. 19) who composed constitutions in 290-1 was only made after the first edition of *Emperors and Lawyers*.¹² The third (and earlier) major stylist of the reign cannot be positively identified, but the stature of the *Codex Gregorianus* and presumably its compiler, and comparison with the career of Hermogenian make it plausible to believe that no. 17/18 (or *Octavodecimus* as Honoré also calls him) is Gregorius.¹³

These three lawyers represent differing and contrasting legal ideologies, 'the historical-conservative, the pragmatic and the philosophical'.¹⁴ Gregorius is seen as a rigid conservative with a backward-looking stress upon *romanitas*,¹⁵ a figure supposedly typical of the outlook of a regime whose princes were simple Latin soldiers of peasant origin (!?), sharing the attitude that also lies behind persecution of Manichees and Christians. By contrast, Charisius is more accepting of the changing legal realities, seeks workable solutions to legal problems, but most significantly points the way ahead by employing highly coloured language and moralizing rhetoric. Finally Hermogenian, epitomator and

¹⁰ Note esp. no. 13, who may have served successively Gordian III, Philip, poss. Decius, and even Trebonianus Gallus (*EL*² 121-5).

¹¹ Thus Liebs (1964), Honoré (1979: 58-62; *EL*¹ 119-32, *EL*² 163-80; 1991a: 135-6).

¹² Liebs (1983: 504; 1987: 21-30; 1989: 70), Honoré (1994: 166-70; *EL*² 156-62).

¹³ Honoré (*EL*¹ 115; *EL*² 155; 1994: 171), Liebs (1987: 30-5).

¹⁴ Honoré (1994: 170-3; *EL*² 181-5); cf. id. (1991a) on Hermogenian.

¹⁵ Thus his disapproval of non-Roman legal practices such as bigamy (*CJ* 5. 5. 2), *apoceryxis* (*CJ* 8. 46. 6), and fraternal adoption (*CJ* 6. 24. 7); poss. also the Damascus incest edict (*Coll.* 6. 4). See Honoré, *EL*² 149, 154-5.

codifier, seeks to impose intellectual order on Roman law by always working logically from clear principles.

Such an analysis turns the rescripts into a dynamic resource for studying the reign of Diocletian and goes a long way beyond the simple enumeration of words and phrases.

II WESTERN RESCRIPTS*

Honoré's method works best with substantial quantities of textual material. He argues against attempts to create tenures of office out of 'scraps'. But where constitutions are scattered by date, place of origin, or format, he tries to relate these by style to the major tenures, if at all possible.

It is useful, therefore, to summarize two bodies of material outside the bulk of the private rescripts issued by Diocletian, for which some identification has been attempted. All possible western rescripts are listed below, with discussion of points of interest, including Honoré's attributions. The places of posting given in brackets represent the suggestions of Mommsen (1860), who was unwilling to ascribe legislation to any ruler other than Diocletian as senior emperor and emended or simply rejected as corrupt any western places in the subscripts, other than those in *FV*.¹⁶

1. *FV* 282 = *CJ* 3. 29. 4 and 8. 53. 6. to Calpurnia Aristaeneta. Posted 10 February 286 at Milan (Nicomedia).

Mommsen suggested replacing Mediolanum with Nicomedia in the subscript.¹⁷ However, this constitution is the only one found in both *FV* and *CJ*, and it could be argued that, as a result, the general acceptance of western places of issue as genuine in *FV* (even by Mommsen) could be extended in at least some cases to *CJ*. Further, since at least one rescript in the *Consultatio* has both western provenance and attribution to *CH*,¹⁸ and since also *CJ* used *CH* as one of its major sources, it is likely that western texts entered *CJ* via *CH*. This rescript is also important for its bearing upon the constitutional position of Maximian and is discussed in Chapter II Section iii c. It is sufficient to point out that, while it is clear that Maximian could issue at least private rescripts as Augustus, his authority as Caesar is less certain. If he became Caesar

¹⁶ Mommsen (1860: 420), listing our nos. 2-3, 11, 13-15.

¹⁸ *Cons.* 5. 7.

¹⁷ *Ibid.* 422.

in 285, and then Augustus on 1 April 286, this rescript was issued while he was still Caesar.

Honoré *EL*² 162 n. 308 proposes Arcadius Charisius as the author of this rescript.

2. *FV* 271. to Boncius Secundus. Posted 21 June 286 at Mainz.

Honoré (*EL*² 162 n. 308 and 1994: 176 n. 63) proposes Charisius as the author of this rescript.

3. *FV* 315 (cf. *CJ* 3. 32. 15. 2, 17 September 293). to Ulpia Rufina. Given 18 February 291 at Reims.

This rescript appears in *CJ* at the end of a rescript of 293. Honoré (*EL*² 179) assigns this text to Hermogenian, perhaps in a subordinate role at the chancery of Maximian. He suggests that another text may also belong to him while in such a post.¹⁹

It is unnecessary to alter Reims (Dorocortorum) to Durostorum to allow attribution to the court of Diocletian.²⁰

4. *CJ* 6. 8. 1 and 7. 9. 3. to Philadelphus. Given 18 March 293 at Ravenna (Heraclea?).

Barnes (*NE* 59) keeps the attribution to Maximian at Ravenna.

5. *CJ* 4. 24. 9. to Georgius. Posted 2 May 293 at Milan.

Accepted by Barnes, *NE* 59.

6. *CJ* 6. 59. 2. to Apollinarius. Given 19 May 293 at Verona (Beroea).

Honoré assigns this text to Hermogenian as *magister* in the east.²¹ Mommsen's emendation of Verona to Beroea is thus highly plausible and fits into Diocletian's itinerary.

7. *CJ* 9. 45. 5. to Matrona. Signed 3? April 294 at Pisa? (Sirmium).

Honoré (*EL*² 165 n. 321) accepts the western place of issue.

8. *CJ* 9. 16. 5. to Agotius. Signed 27 October 294 at Rome (Soatrae?).

This rescript was apparently issued from Rome, thus raising the problem of Maximian's visits to the capital. The panegyric of 307 is usually taken to imply that Maximian's first visit to the city was after his return from Africa in 299.²² Barnes argues that, since Fausta was born in Rome and was depicted (according to the same panegyrist) as

¹⁹ Honoré, *EL*² 179 n. 517 on *CGV* 10. 13. 1, which gives no place of issue or posting.

²⁰ See Barnes, *NE* 58 n. 51.

²¹ Honoré, *EL*² 164 n. 317. Barnes (*NE* 59) keeps Verona.

²² *Pan. Lat.* 7(6). 8. 7. It is thus interpreted by Nixon (1981: 71).

a child in a mosaic of c.296, Maximian must have visited the city as early as c.290.²³

The mark of style adduced by Honoré in this case, the use of *convenit*, appears strongly indicative of Hermogenian in the east,²⁴ and so the attribution to Maximian in Rome should at best remain speculative.

9. *CJ* 5. 16. 23. to Caeciliana. Signed 1 November 294 at Brundisium (Burtudizum).

Since Diocletian is attested at Burtudizum on 3 November 294, emendation of Brundisium is persuasive. Honoré attributed this to Hermogenian in the east.²⁵

10. *CJ* 6. 20. 14. to Stratonica. Posted 23 February 295 at Trimontium.

Trimontium is unidentified. Mommsen suggested Philippopolis, and Barnes somewhere near Nicomedia.²⁶ Honoré suggests that this should be an early western rescript of Hermogenian, and thus somewhere near Milan.²⁷

11. *Cons* 5. 7. to Claudius Menander. Posted 21 March 295 at Milan.

Assigned to Hermogenian as *magister* to Maximian by Honoré, *EL*² 177 n. 500.

12. *FV* 290. Recipient lost. Given 29 September [295/316?] at Verona.

Assigned to Hermogenian as *magister* to Maximian by Honoré (*EL*² 177 n. 502), with a suggested date of 295, but otherwise attributed to Constantine in 316.²⁸

13. *FV* 292. Recipient lost. Posted 21 December 295 at Milan.

Assigned to Hermogenian as *magister* to Maximian by Honoré, *EL*² 177 n. 503.

14. *FV* 313. to Laelius Sempronius Laeporius. Given 31 March 296 at Aquileia.

Assigned to Hermogenian as *magister* to Maximian by Honoré, *EL*² 177 n. 504.

15. *FV* 41. to Tannonia Julia. Posted 10 March 298 at Carthage.

Suggested as a possible text of Hermogenian as *magister* to Maximian by Honoré, *EL*² 177 n. 505.

²³ Barnes, *NE* 34 and 58 n. 49 (rejecting the view that the panegyrist refers to Maximian's visit of 299 as his first).

²⁴ Honoré, *EL*² 165 n. 321; 167 n. 338 (47 of 55 dated texts).

²⁵ *EL*² 171 n. 399.

²⁶ Barnes, *NE* 54 n. 33.

²⁷ *EL*² 166 n. 324, 177 n. 500.

²⁸ Seecck, *RG* 165; Barnes, *NE* 73.

16. *CJ* 7. 21. 8. to Theodorus. Given 22 November 299 (?) at Milan (?).

Milan (*Mediolanum*) is a suggested expansion for the otherwise unidentified *Mel.* in the subscript.²⁹ Maximian returned from Africa to Italy in 299 and so could have been in Milan on this date.

17. *FV* 291. Recipient lost. Posted 28 May [... *III cons.*] at Trier.

This is usually attributed to Constantine in 313.³⁰ However, given the range of possible restorations for the consular date, this could represent Maximian at Trier in 290.³¹

The attribution to Maximian of western rescripts from the Vatican Fragments is not in doubt (nos. 2, 3, 13–15, possibly nos. 12 and 17). Further, the fact that one of them has parallel extracts in *CJ* (of *CG* date; no. 1), suggests that *CG* too contained western texts. Likewise, the *Consultatio* text shows a positive attribution to *CH* (no. 11). Many of the *CJ* texts with western place-names in the subscripts are still open to suspicion, whether or not the emendations of Mommsen are accepted (nos. 6, 8–10, 16). Honoré's attribution by style in some cases supports this conclusion, so that texts are the more firmly assigned to Diocletian's chancery (nos. 6, 8, 9).

Honoré also assigns western rescripts to Charisius and Hermogenian as officials in the west. Thus nos. 10–15 represent Hermogenian as *magister libellorum* to Maximian from 295 to 296 (possibly to 298). The mobility of officials between east and west under the tetrarchy is ill understood. Diocletian's praetorian prefect Hannibalianus entered the senate and ended up as urban prefect at Rome,³² while a number of senators travelled from Italy to the east as governors (mainly to hold the proconsulate of Asia).³³ But the extent to which non-senatorial appointments were made on a discrete geographical basis, whether in the provinces or at court, is unknown. If accepted, the case of Hermogenian would provide a clear example of an official serving at both courts.³⁴ The conventional interpretation of their relationship would

²⁹ Liebs (1987: 142); Honoré, *EL*² 178 n. 510. Melantias, between Heraclea/Perinthus and Byzantium, is attested in Nov. 294 (*CJ* 2. 4. 33 and *FV* 314).

³⁰ Seeck, *RG* 161; Barnes, *NE* 71.

³¹ For Maximian's movements, see *ibid.* 58. It is not impossible, though I think highly unlikely, that this represents Constantius at Trier in 300 or 304.

³² *Ibid.* 98.

³³ For Asia, see *ibid.* 157–8. Note also Artorius Pius Maximus and Aelius Helvius Dionysius (*ibid.* 115).

³⁴ I leave aside, for the moment, the implications of Hermogenian's praetorian prefecture; see Sect. iv below.

imply that the initiative for this appointment came from Diocletian not Maximian.

Nos. 1–2 may similarly represent Charisius at the court of Maximian in 286. Indeed, two rescripts showing marks of his style from late 287, which Honoré takes as denoting the end of Gregorius' first term in office at Diocletian's court,³⁵ could easily be assigned to Charisius in the west rather than the east, since they carry no place of issue or posting, nor any other sign of geographic origin.³⁶ It is easy to imagine Charisius travelling from the east in the entourage of Diocletian in 285 and staying to serve Maximian as *magister libellorum* until at least 287. Similarly, it seems that Gregorius served Carinus in the west in 284–5, being taken over by Diocletian and returning with him to the east.³⁷

A handful of constitutions stylistically attributed by Honoré to Hermogenian are scattered outside his major tenures of office. In the first edition, Honoré proposed as many as six periods in office for Hermogenian to account for such diverse texts.³⁸ This pattern of iterated tenure is most unlikely and is rightly abandoned in the second edition. But two devices are employed to account for these maverick texts (other than discarding the attributions): first, that rescripts were composed by Hermogenian in a subordinate position;³⁹ secondly, that rescripts were influenced by Hermogenian as praetorian prefect.⁴⁰

Both these ideas would seem to undermine the central position of Honoré's thesis, that rescripts were composed by the *magister libellorum*. It is not, however, unreasonable to suppose that the content of rescripts was subject to various influences, and that the *magister* was not the only person to affect the content of rescripts. The number of petitions that had to be processed was probably very great and even the exceptional number of rescripts surviving for the years 293 and 294 can only have been part, not only of total output, but also of the those replies needing some juristic ability. As mentioned above (Ch. 3 Sect. ii), the emperor was no cipher, nor should we discount the input of the praetorian prefect and members of the *consilium*.⁴¹ It is also reasonable to imagine some role for subordinates or assistants in the *scrinia*.

³⁵ *EL*² 151 nn. 88–9, 162 n. 309; 1994: 176 n. 63 (*CJ* 2. 42. 2 and 9. 42. 1).

³⁶ Liebs (1987: 27), accepted by Honoré (1994: 170, 177 n. 169).

³⁷ Honoré, *EL*² 147–8. ³⁸ *EL*¹ 130, 145.

³⁹ Thus no. 3 above and *CGV* 10. 13. 1; cf. Ulpian in 203 5 (*EL*² 86).

⁴⁰ *EL*² 178; cf. Papinian and Ulpian as prefects *EL*¹ 46; 1982: 39; *EL*² 86).

⁴¹ Peachin (1992: 457–8) argues that a rescript attributed to Papinian as a *libellis* is in fact a letter, and thus Papinian can only have influenced its content during discussion in the *consilium*.

Is Honoré wrong, therefore, to work on the assumption of sole authorship by the *magister*, only proposing alternatives in difficult cases? I think not, given the overall weight of the stylistic evidence, which is not unreasonable in suggesting a preponderant role for the *magister*.

A further thought is that some of the maverick Hermogenian texts may be a product of the nature of the Hermogenian Code, which was not just a compilation, but a true work of Hermogenian. It is clear that he concentrated on his own texts for the code, and perhaps he even edited those of others into his style. This may also have operated if it was he who produced the later editions.⁴² Nevertheless, it is clear that constitutions stylistically associated with a large body of homogeneous material from which they are isolated in time and place remain problematic. Honoré himself warns against trying to create *fasti* out of scraps.⁴³

III EPISTULAE

Imperial letters were the province of two palatine officials, the *magister epistularum Latinarum* and *magister epistularum Graecarum*. Too few examples survive for analysis along Honoré lines, especially as the identification of texts as letters is often unclear, but some coincidences of style with private rescripts accord with the idea of a progression of officials from one palatine post to another, as known from inscriptions (see Saturninus below).

Attributions of texts to *magistri* as suggested by Honoré are set out in Table 1. This gives the letter catalogue number and text reference, the date, the *magister* identified, and the relevant note number references to *EL*² chapter 4. Honoré's suggestions are in general more tentative than this bald presentation implies.

The first two letters, with their problematic dates, could be private rescripts of Charisius/no. 19 in 291 (letters nos. 1–2). If, however, these are indeed letters and are dated to 286 and 287 respectively, they could be assigned to Charisius as *magister epistularum* (although he should perhaps be assigned to the western *libelli* at that time). Rather more plausible is Charisius' progression on to the *epistulae* in 292–3 (letters nos. 13, 14, 20, 22, and 23).⁴⁴ That he, as author of the most rhetorical

⁴² There is, of course, no explicit evidence for Hermogenian's editorial policy (or any imperial instructions) as there is for the later codes. ⁴³ *EL*¹ 96; *EL*² 130.

⁴⁴ There is no need to ascribe letter no. 22 to Charisius at the court of Maximian (as at Honoré, *EL*² 162) rather than at the court of Diocletian, since Diocletian could respond

TABLE I

Letter Cat. No.	Date	Attribution
1. <i>CJ</i> 1. 51. 1	14.7.286/291	no. 19, nn. 83, 152, 175, p. 42
2. <i>Coll.</i> 6. 5-6	287/291	no. 19, nn. 153, 197
5. <i>CJ</i> 8. 46. 6	15.11.287/8	no. 18, n. 54
6. <i>CJ</i> 7. 56. 3	19.8.289	no. 20, n. 345
11. <i>CJ</i> 7. 35. 4	27.2.292	no. 18, n. 144
13. <i>CJ</i> 9. 2. 11	6.4.292	no. 19, nn. 144, 312
14. <i>CJ</i> 10. 10. 1	12.4.292	no. 19, nn. 144, 188, 312
15. <i>CJ</i> 10. 62. 3	284/292	no. 17, n. 67
20. <i>CJ</i> 11. 55. 1	284/292	no. 19, nn. 202, 312
22. <i>CJ</i> 2. 13. 1	10.9.293	no. 19, nn. 188, 221, 313
23. <i>CJ</i> 2. 51. 2	24.11.293	no. 19, nn. 209, 214
27. <i>CJ</i> 5. 12. 21	5.8.294	no. 20, nn. 2, 398
28. <i>CJ</i> 2. 12. 20	22.9.294?	no. 20, n. 487
39. <i>CJ</i> 5. 73. 4	8.6.303	no. 20, nn. 349, 439

and moralizing rescripts, should have been put in charge of Latin letters, with greater potential for oratorical display, is entirely appropriate.

The texts ascribed to Hermogenian (no. 20) are scattered oddities. Letter no. 27 may represent a matter referred to the court of Diocletian by Constantius. Two other letters may belong to Hermogenian's period as praetorian prefect (letters 28 and 39, dated to 302 (by Honoré) and 303 respectively).

Evidence for Gregorius/Octavodecimus is rather too slender to exploit. Further, the attribution of texts to him from their traditionalist content alone supposes that there were no other conservative jurists at the court of Diocletian. Nevertheless, if these texts are attributed to him, it suggests that letter no. 5 is rather a private rescript of 287, while letter no. 11 (with no. 15) might mean that he was *magister epistularum* in 292, shortly before Charisius took office. If he is associated with the Damascus incest edict, he might also have been *magister memoriae* in 295,⁴⁵ although the connection between edicts and *magistri memoriae*

to *consultationes* from the west. The tenure may be extended to 294 (Honoré, *EL*¹ 119 n. 202; 1994: 177 n. 171).

⁴⁵ Liebs (1987: 35) and Honoré, *EL*² 154-5. Note also that the edict *de appellationibus* (*CJ* 7. 62. 2, edict no. 1d of 294) is in a clear and bare style that might well be that of Gregorius (also, the use of *salubriter*, *EL*² 155 n. 144).

is far from certain.⁴⁶ Honoré suggests that he also composed *CJ* 8. 47. 5, the famous rescript on the adopting woman.⁴⁷ Since this was associated with an *adnotatio* (supposedly the province of the *magister memoriae*), might he not have been *magister memoriae* for the period 291-5?

IV PROSOPOGRAPHY

This prosopography attempts to integrate the conclusions of Honoré with more conventional types of evidence. While I accept the major periods in office delineated by Honoré, the identification of tenures of office from stylistic 'scraps' is more speculative, and, where plausible, is not in consequence true.

(1) *Hermogenian*

An incomplete mosaic of scattered ancient evidence and modern inference must be drawn together to produce a coherent career for Hermogenian.

Four Hermogeniani can be drawn from evidence for the time of Diocletian:

1. The namesake for the *Codex Hermogenianus*.⁴⁸
2. The jurist Hermogenianus, author of the *Iuris Epitome* known from the *Digest*.⁴⁹
3. Eugenius Hermogenianus, dubiously attested as praetorian prefect of Maximian at Rome in April 304 (*Passio Sabini*).⁵⁰

⁴⁶ Peachin (1989: 176 n. 26). See Ch. 7 Sect. iv. ⁴⁷ *EL*³ 155 n. 143.

⁴⁸ The form of the name of the person from whom the code took its title has long been accepted as Hermogenianus (Mommmsen 1889: 348-9), though Pólay (1986: 189-90) thinks Hermogenes equally likely.

⁴⁹ For the *Iuris Epitome*, see the palinogenesiae of Lenel (1889: i. 265-78) and Liebs (1964: 116-30). The argument that the work must date after Constantine's edict of 331 (which denies the right of appeal from the praetorian prefect) on account of a reference to the inappellability of the praetorian prefect (*D* 4. 4. 17) is no longer generally accepted. See for instance, Liebs (1964: 13-16), Balestri Fumagalli (1980: 222-3), Pólay (1986: 192-3), Honoré (1994: 165-6). Liebs (1964: 13-22) argues that the *Iuris Epitome* should date from c.300.

⁵⁰ The different texts of the *Passio* tabulated for comparison are given by Liebs (1964: 32-3; 1987: 40). In two versions Hermogenian is urban prefect and in only one is he praetorian prefect. Liebs also suggests a reconstruction of the imperial letter contained within the *Passio*, beginning with the words *Ex suggestione patris nostri Hermogeniani Praefecti Praetorio*.



3 Carolingian manuscript of the Breviary of Alaric, depicting four Roman jurists/legislators: Severus (the emperor Libius Severus), Gaius, Paul, and Hermogenian (see Mommsen, *CTH* i/1. lxxi and McKitterick 1980: 19–20)

4. Aurelius Hermogenianus, attested epigraphically as praetorian prefect 293/305.⁵¹

The first two can be identified, not only on the grounds of name and date,⁵² but on the similarities in style and content between the *Iuris Epitome* and the rescripts in the code.⁵³ The jurist, as author of the imperial constitutions in the code, should have held office as *magister libellorum* to Diocletian at least for the period 293–4. Producing the first edition of *CH* early in 295, he may have then journeyed to the west to hold the *libelli* at the court of Maximian, 295–8. Since Sedulius refers to three editions of his work,⁵⁴ he could have produced a second edition of *CH* with some additional western rescripts after 298. With no evidence as to his date of birth, there is no reason why he could not have survived to produce a third putative edition at the court of Licinius (or even at the law school of Beirut) c.320.

The *Passio Sabini* for long provided the only (very tentative) evidence that the last of the classical jurists held the praetorian prefecture,⁵⁵ emulating Papinian and Ulpian.⁵⁶ The more recent inscription would seem to confirm that the jurist and *magister libellorum* did indeed go on to hold the senior palatine office. That the *Passio* calls him Eugenius Hermogenianus and the inscription Aurelius Hermogenianus hardly matters. The *Passio* is regarded as largely fictional and any truth it may contain will only be a distant echo.⁵⁷

But if Hermogenian was indeed praetorian prefect, is the *Passio* therefore correct in placing him with Maximian in Rome? The recently

⁵¹ AE 1987. 456 (Brixia), Chastagnol (1989), and Liebs (1990).

⁵² Arguments against this identification have been put by Pólay (1986: 188–90) as follows: (a) the namesake for *CH* is as likely to be Hermogenes as Hermogenianus; (b) Sedulius' reference to three edns. must mean the *Iuris Epitome* as a work from the author's pen, rather than *CH* as a compilation of imperial rescripts; (c) the *Passio Sabini* is irrelevant and meaningless evidence. In answer to (a): a namesake Hermogenianus is still not excluded; to (b): *CH* is from the author's pen, since the compiler wrote the rescripts, even if in the emperors' names; to (c): the Brixia inscription proves the existence of a prefect Hermogenianus c.300 and therefore cannot be ignored.

⁵³ Liebs (1964 23–31), Cederelli (1965, ch. 5), and Honoré (1979: 58–62; *EL*¹ 130–2; *EL*² 179–80).

⁵⁴ *Epistula ad Macedonium (altera)* in CSEL x. 171.

⁵⁵ See the cautious comments of Barnes, *NE* 136–7.

⁵⁶ See the proposed *fasti* at Honoré, *EL*² 190; cf. Tarutienus Paternus, writer on military law, who was *ab epistulis Latinis* and then praetorian prefect under Marcus Aurelius (*Prosopographia Imperii Romani*, 1st edn., iii. 296–7, no. 24). There is also the possibility that Paulus became a *memoria* and later praetorian prefect under the Severans (*SHA, Niger* 7. 4; see Honoré 1991b: 23).

⁵⁷ The *Passio* has not been critically edited and may contain authentic material, the imperial letter perhaps deriving from a reliable document. This would dispose of the

discovered inscription is from Brixia in northern Italy. It is a dedication to Constantius I as Caesar by two praetorian prefects, Julius Asclepiodotus *vc* and Aurelius Hermogenianus *v[e]*. If both prefects were of senatorial rank, their two names would be followed by the joint abbreviation *vvcc*. It is clear, therefore, that the rank of Hermogenianus is correctly restored as *vir eminentissimus*.⁵⁸ This strengthens the view that praetorian prefects did not at this period ordinarily gain senatorial rank, but only as a result of holding the consulship.⁵⁹ It necessitates a substantial revision of the list of tetrarchic prefects as set out in Barnes' *New Empire*, which is based on two main assumptions: that Constantius and Galerius each held the praetorian prefecture prior to their nomination as Caesars, and that they thereupon acquired praetorian prefects of their own.⁶⁰ This can no longer be maintained. It is now clear that Asclepiodotus, appointed prefect before 292, continued in office after his consulship in that year (the consulship gaining him senatorial rank) and on into the tetrarchy. Thus the extra Asclepiodotus suggested by Barnes as prefect to Constantius must be discarded. Could this mean that Asclepiodotus stayed as prefect but was transferred to Constantius, while Maximian appointed another prefect for himself and in due course appointed Hermogenian? We might even suppose that Hermogenian held the western *libelli* in 295–8 and then the prefecture with Maximian up to 304 (if the Passion is taken as a guide) or even to the abdication in 305. The inscription is therefore a dedication by the two prefects in the west.

This is not the most likely explanation. The praetorian prefects, like the emperors they served, seem to act as a college. Although inscriptions set up by individual prefects are known, joint dedications always seem to list all those in office, irrespective of geographical considerations. Thus a letter sent by the prefects from Trier in 315 and a dedication set up to Crispus near Ephesus in 317 include the names of both prefects, Petronius Annianus for Constantine and Julius Julianus for

problem of the differing names in nos. 3 and 4. Aurelius and Eugenius, since Eugenius Hermogenianus occurs in the body of the (dubious) passion, but Hermogenianus alone in the (less dubious?) letter. Note, however, that the names Aurelius Eugenius occur together in *CJ* 4. 35. 19 (Oct. 293?). Perhaps all three names constituted Hermogenian's full nomenclature (e.g. M. Aurelius Eugenius Hermogenianus)? For the collected prosopography of Eugenii and Hermogeniani, see Liebs (1964: 37–8; plus 1987: 51–2 for poss. descendants).

⁵⁸ This is the argument of Chastagnol (1989).

⁵⁹ The praetorian prefecture only seems to have carried senatorial rank from some point after 324. The earliest attestation is from 331 (*AE* 1981. 878). ⁶⁰ *NE* 124–6.

Licinius.⁶¹ The Brixia inscription shows, therefore, that the total number of prefects in office at this time was two.⁶² Since Asclepiodotus must have been the prefect of Maximian, Hermogenian was the prefect of Diocletian. We can only amalgamate the two prefects called Hermogenianus, if we suppose that the same man successively served first one, then the other Augustus in the same post. I think it unnecessary to do this simply to salvage some authenticity for the Passion.⁶³

If Hermogenian was *magister libellorum* in 293-4, he could then have been appointed prefect later in 295 on the publication of his code;⁶⁴ or alternatively on his return from a possible western tenure of the *libelli* in 295-8. Other prefects of Diocletian are attested uncertainly in 302 and 303.⁶⁵ At the least, Hermogenian's prefecture should lie between 298 and 302, but possibly any time in the last decade of Diocletian's rule (or even beyond?). Texts of the early 300s, which may have marks of his style, should perhaps be taken to show him exerting influence from his position as prefect.⁶⁶

Hermogenian's career and its chronology can be summarized as follows:

293-4	<i>Magister libellorum</i> (east)
early 295	<i>Codex Hermogenianus</i> published (court of Diocletian?) ⁶⁷
295-8	<i>Magister libellorum</i> (west)
298-302?	Praetorian Prefect to Diocletian

⁶¹ Optatus, *App.* VIII and *AE* 1938. 85 (cf. *ILS* 8938). Colleges of five are attested in the 330s (*AE* 1981. 878 and 1985. 823, 869). Collegiality is still in evidence at the end of the 4th cent., as shown by a letter of 399 in the names of four prefects to the governor of Arcadia in Egypt (Kramer 1992); cf. Justinian, *Nov.* 166.

⁶² As concluded by Chastagnol (1989). This argument can only be overturned if new evidence shows definitively that there were four prefects under the first tetrarchy.

⁶³ The memory of Hermogenian in Rome, if genuine, could stem from his presence in the city with the courts of Diocletian and Maximian for the *vicennalia* in 303, whatever the post, if any, he might have held at that time.

⁶⁴ Hannibalianus was Diocletian's prefect before 292 and consul with Asclepiodotus in that year. It is not known when he ceased to hold office, but it must have been by 297, when he became urban prefect (Barnes, *NE* 98).

⁶⁵ Barnes, *NE* 124 (Asclepiades), 126 (Flaccinus, ascribed to Galerius). Each is given question marks by *PLRE* i. 114, 342. Asclepiades is presented by Prudentius (*Peristephanon* 10) as condemning Romanus at Antioch in 302, but the account of Eusebius (*MP* 2) only calls the anonymous official *dikastes* (the prefecture is rejected by Howe 1942: 95). Flaccinus is described as prefect by Lactantius (*DMP* 16. 4), but not specifically as praetorian prefect.

⁶⁶ Honoré, *EL*² 178. For the influence of Papinian and Ulpian as prefects upon rescripts, see *EL*¹ 46; 1982: 39; and *EL*² 86.

⁶⁷ Honoré (*EL*² 166) places publication in Milan, with a letter to the governor of Numidia from June 295 as one of the latest items included; cf. Liebs (1987: 37).

- after 298 *Codex Hermogenianus* second edition (court of Diocletian/Galerius)
 c.300 *Iuris Epitome*
 c.320 *Codex Hermogenianus* third edition (court of Licinius/Beirut?)

(2) *Gregorius*

Beyond being the namesake for the *Codex Gregorianus*, *Gregorius* is completely unknown. However, by comparison with the career of *Hermogenian*, it is plausible to suggest that he held the *libelli* at some point. The suggested identification with secretary no. 17/18 by Honoré is appropriate if unprovable.⁶⁸ If true, his career might have been as follows:

- 284–5 *magister libellorum* (west, with Carinus)
 285–90 *magister libellorum* (east, with Diocletian)⁶⁹
 290/1 visit to Rome, winter
 291/2 *Codex Gregorianus* published (Milan? or court of Diocletian)
 292? *magister epistularum (Latinarum)* (east)
 291/5? *magister memoriae*?⁷⁰
 c.306 *Codex Gregorianus* second edition (court of Maximinus/Beirut?)

(3) *Aurelius Arcadius Charisius*

Charisius is explicitly attested in the *Digest* (I. 11. 1) as *magister libellorum*. He has often been supposed to be Constantinian in date,⁷¹

⁶⁸ Honoré, *EL*¹ 115, 145; *EL*² 155; Liebs (1987: 30–5; 1989: 61).

⁶⁹ Honoré gives two periods, 284–7 for no. 17 and 289–90 for no. 18. If they represent the same man in office, a continuous tenure seems most likely. Honoré detects different hands (*Charisius*?) at work in late 287 (*EL*² 151), but these could be western rescripts of *Charisius*. However, a break in *Gregorius*' holding of office might explain the gap in the rescripts in 288–9, if he avoided or found unavailable texts from that period.

⁷⁰ Peachin (1989: 176) is suitably cautious on this.

⁷¹ Most recently argued at length by Pólay (1986: 196–212), who places *Charisius* back in the reign of Constantine (his traditional date). The *Liber de Officio Praefecti Praetorio* (extract at *D* 1. 11. 1) is dated after the 331 edict on the prefect's inappellable jurisdiction, which it is supposed to mention and even echo in its language. The traditional dating can be rejected, by denying the apparent similarity with the edict and arguing that the reference to an imperial decision (a *sententia* or judicial ruling, not an edict) should be Diocletianic or earlier, the Constantinian text not being innovative (thus Dell'Oro (1962: 337–9) and Balestri Fumagalli 1980: 216–22, both placing him in the 290s and identifying him incorrectly with the governor of Syria, see below; see now

but has recently been placed more firmly in the reign of Diocletian and identified with Honoré's no. 19.⁷² If so, he might have held office as follows:

286-7	<i>magister libellorum</i> (west)
290-1	<i>magister libellorum</i> (east)
292-4	<i>magister epistularum</i> (<i>Latinarum</i>) (east) ⁷³

There is no need to identify him with the Diocletianic governor of Syria in 290.⁷⁴

He wrote three monographs.⁷⁵ *De Testibus*⁷⁶ and *De Muneribus Civilibus*⁷⁷ probably predate his major period in office as *magister*. *De Officio Praefecti Praetorio* was written while he was in office.⁷⁸

(4) *Eumenius*

Eumenius is attested as *magister memoriae* to Constantius or Maximian c.297. Constantius appointed him as professor of the *Scholae Maenianae* at Autun.⁷⁹

(5) *Sicorius Probus*

Probus is attested as *magister memoriae*, negotiating with Narses in 298.⁸⁰

Liebs 1987: 22-4 and Honoré 1994: 165-6). Grelle (1987: 65) also rejects the connection with the edict of 331. He appears to want to place Charisius as *magister* in the 320s, but recognizes that his preference pushes the evidence he cites too far (pp. 69-70).

⁷² Liebs (1983: 504; 1987: 21-30; 1989: 70; previously, Liebs (1964: 14 n. 2) accepted the post-331 dating for Charisius). Honoré left open the possibility of the identification of Charisius with one of his secretaries (*EL*¹ 145-6), but now regards the identification as certain (*EL*² 160-2; 1994: 166-70).

⁷³ Honoré (*EL*¹ 145) suggested no. 19 as *magister epistularum* to Constantius I in 305, citing *CJ* 3. 12. 1 (though without any supporting stylistic evidence), which must in fact have been issued by Maximinus. Would Charisius (after an exceptionally long tenure) have passed from serving Augustus to Caesar in 305, when the Caesars may not even have been served by *magistri* of full rank? However, this text is not cited in *EL*² and there is no further stylistic inference for speculating about Charisius' later career. The presence of the phrases *aperte declaratur* (*CJ* 6. 9. 7, Sept. 305) and *aperte claret* (*CJ* 5. 42. 5, Dec. 305) suggests a new hand at work in Maximinus' chancery.

⁷⁴ Recipient of *CJ* 9. 41. 9, 11. 55. 1. The identification is rejected by Pólay (1986: 204-6, 207-10), Liebs (1987: 28-30), and Honoré (1994: 164, 170).

⁷⁵ Lenel (1889: i. 57-60). See Liebs (1987: 131-3; 1989: 69-71), and Honoré (1994: 163-6).

⁷⁶ *D* 50. 4. 18. ⁷⁷ *D* 1. 11. 1 (Honoré 1994: 170).

⁷⁸ *Pan. Lat.* 9(4). See letter catalogue, no. 30; Rodgers (1989); and Peachin (1989: 176).

⁸⁰ Petrus Patricius, *Frag.* 14 (*FHG* iv. 189); Peachin (1989: 177).

(6) *C. Caelius Saturninus*

Saturninus is attested as praetorian prefect (probably in Gaul) c.337.⁸¹ He is credited with a long list of sixteen offices, starting as *advocatus fisci per Italiam*, possibly under Maximian, with later offices in Gaul, Rome, Italy, and the Balkans.⁸² He also held a variety of palatine posts, including those of *magister libellorum* and *magister studiorum*, possibly under Maximian or Constantius I.⁸³

(7) *Claudius Eusthenius*

Claudius Eusthenius is dubiously attested in the *Historia Augusta* (*Carus* 18. 5) as *ab epistulis* to Diocletian.*

(8) *Innocentius of Sardis*

The jurist Innocentius of Sardis, though probably not holding any office, appears to have been entrusted with some form of law-codification by unnamed emperors, perhaps Diocletian and his colleagues.⁸⁴

V EMPERORS AND ORATORS

The connection between literary/rhetorical ability and imperial service is quite marked.⁸⁵ To those born in the daytime under the equal influence of Mercury and Venus, Firmicus Maternus predicts posts as imperial guards or finance officials, but also *publicos magistratos aut oratores aut grammaticos aut legum inventores* ('public magistrates or orators or grammatici or devisers of laws'), while night-time birth brings *litteris regis praepositos, sed quorum oratio ac sermo plenus sit leporis et gratiae* ('those in charge of royal correspondence, but whose oratory and speech is full of elegance and grace').⁸⁶

The panegyrists well illustrate the connection of literature with the court. It is not that panegyrists are simply mouthpieces for imperial propaganda. While undoubtedly seeking to please the emperor within the formula of the *basilikos logos*, and treating themes in a manner

⁸¹ *ILS* 1215 (see Barnes, *NE* 134).

⁸² *ILS* 1214 (*PLRE* i. 806). *PLRE* i. 1081 and Barnes, *NE* 143 make him vicar of Moesia c.321.

⁸³ Liebs (1987: 53–5).

⁸⁴ Eunapius, *V. Soph.* 500 (*PLRE* i. 457, Innocentius 1). Discussed above, Ch. 2 n. 29.

⁸⁵ For this subject under the principate, see Millar (1977: 83–101).

⁸⁶ *Mathesis* 3. 12. 1–2; cf. 4. 14. 16. Note also 3. 6. 1 (Venus) and 3. 7. 1 (Mercury). For a general survey of Maternus' material, see MacMullen (1971; partly based on a 1913 article by L. Thorndike).

sensitive to current imperial policy, it is a mistake to regard the content of a panegyric as straightforward regurgitation of imperial thinking according to a pre-arranged programme. The input of the emperor into pronouncements in his own name is difficult to gauge, so even less should we find him directly controlling the content of the speeches of others.⁸⁷ This is not to say that panegyrics do not have an important role to play in expressing loyalty to the emperor and binding the educated classes to the imperial regime. The orator from Autun is conscious of his public role, glad that he is: *iam non privati studii litterarum, sed publicae gratulationis orator* ('not only as an orator for private education but also of public thanksgiving').⁸⁸ But rhetors do not only make speeches before the emperor, they also enter the imperial service, and give their sons and others the rhetorical education that will enable them to do likewise.⁸⁹ The orator, speaking in 310 before Constantine, is ambitious for his sons and pupils to prosper in the imperial service.⁹⁰ Eumenius proceeded from his literary background into the imperial *scrinia*, then back to a professorship, and well understood the intertwining of rhetorical training and palatine office.⁹¹ Mamertinus, who delivered panegyrics 10(2) and 11(3) before Maximian, was probably the father of Claudius Mamertinus, consul of 362, who delivered panegyric 3(11) before Julian and was appointed praetorian prefect.⁹² The most notable example of all is later in the fourth century, when Ausonius of Bordeaux, tutor to the emperor Gratian, became for a while the dominant force in the imperial administration of the west.⁹³

Other literary figures associated with Diocletian include Sammonicus, who dedicated a work to Diocletian and Maximian/Galerius,⁹⁴ and the

⁸⁷ On the nature of panegyrics and the extent to which they can be regarded as propaganda, see MacCormack (1975: 154–86; 1981: 1–14), and Nixon (1983). Nixon (1993) argues that Grünwald (1990) is incorrect to treat *Pan. Lat.* 7(6) as direct imperial propaganda.

⁸⁸ *Pan. Lat.* 5(8). 1. 2.
⁸⁹ From a later period, Cassiodorus' *Variae* were at least partly designed as literary models for the education of state servants (*Variae pr.* 8).

⁹⁰ *Pan. Lat.* 6(7). 23. 2. For other figures associated with Constantine, see Ch. 10 Sects. ii and iii.

⁹¹ Note e.g. *Pan. Lat.* 9(4). 5. Although he never held office, one may wonder if Lactantius, as Professor of Rhetoric at Nicomedia, influenced styles in the imperial chancery through his pupils. For Lactantius' influence on Constantine's pronouncements, see Amarelli (1978), Bryce (1989), Warmington (1989), Digeser (1994).

⁹² See Lieu (1989: 4–12). Apart from Eumenius, Mamertinus, and Nazarius from the corpus of panegyrics, the only other named panegyrist of the tetrarchic period is Soterichus (*PLRE* i. 850 (Soterichus 1)); cf. fragment of a poem on the deeds of the tetrarchs in *Pap. Argent. Inv.* 480.

⁹³ See J. F. Matthews (1975: 69–87).

⁹⁴ John Lydus, *De Magistratibus* 3. 32. See *PLRE* i. 801.

sophist Andromachus.⁹⁵ Flavius *grammaticus*, author of a work *De Medicinalibus*, was summoned by Diocletian to Nicomedia along with Lactantius.⁹⁶ Sossianus Hierocles, who served as governor of Bithynia and advocated the persecution of the church, wrote an anti-Christian polemic entitled *Philalethes*.⁹⁷

Thus the imperial court continued its tradition of close association with orators, sophists, and jurists.⁹⁸

⁹⁵ *PLRE* i. 63 (Andromachus 2). For two anonymous philosophers at the court of Diocletian, see Lact. *DI* 5. 2. 4 and Themistius, *Or.* 5. 63d. The former should not be identified with the philosopher Porphyry (Barnes 1973b: 438–9).*

⁹⁶ Jerome, *De Viris Illustr.* 80.

⁹⁷ See Lact. *DMP* 16. 4 and *DI* 5. 2. 12.

⁹⁸ Imperial hostility to literary and forensic ability is attributed to Galerius (Lact. *DMP* 22. 4) and Licinius (Aurelius Victor, *Caes.* 41. 5 and *Epitome de Caesaribus* 41. 8).

The Recipients of Private Rescripts

I INTRODUCTION

The Gregorian and Hermogenian Codes were officially sponsored productions. But if the impetus for their compilation was imperial, the rescripts included in them were prompted by private petitions, originating often far from the court. Thus, whatever selection procedure chose rescripts for the codes, the population of texts, from which the selection was made, came into being as a function of private initiative. Indeed, with around 1,200 surviving rescripts, the number of private individuals known by name to have petitioned Diocletian exceeds that for any other emperor.¹ Whatever effect upon the accessibility of the ruler was caused by the gorgeous ceremonial of the late antique court (as reputedly introduced by Diocletian),² there was no adverse effect upon the flow of petitions, at least in the early years of the tetrarchy.³

Therefore, there are two questions to be addressed. Who were the petitioners? From where did they come? These are not easily answered, since the narrow legal focus of the rescripts means that most are poor in extraneous information, and may not even provide much detail about the cases under consideration. However, there are scattered items of interesting evidence to be gleaned, which, with some generalizations, can provide an idea of the population that caused the rescript system to produce its goods.

The majority of recipients are addressed by a single name, though two names are very common and three or even four names can occur.⁴

¹ The volume of petitions must always have been great. Note that Subatianus Aquila received 1,804 petitions over 3 days c.209 (*P. Yale* 1. 61); cf. petition no. 1007 in *P. Oxy.* 2131.

² On *adoratio* under Diocletian, see Stern (1954) and letter no. 63a. ³ Nazarius says of Constantine: *Quid? faciles aditus, quid? aures patientissimas, quid? benigna responsa* (*Pan. Lat.* 4(10). 34. 4). Even children were brought before the imperial gaze (*CTh* 12. 17. 1).

⁴ Four names occur at *CJ* 4. 34. 7, *Coll.* 10. 4. A complete alphabetical list of Diocletianic recipients is given in Rotondi (1922: 268–83). Add two names from the papyri: Aurelius Severus from *Chr.* ii no. 380 and Flav[ius/ianus?] (but certainly male) from *PSI* 111. For names occurring in the text of the rescripts, see Ch. 3 n. 125 above.

The sources outside *CJ* tend to preserve two or more names.⁵ In cases where there is a parallel *CJ* extract, the other sources frequently provide a second name not given in the code.⁶ Thus, it seems likely that the *CJ* compilers have shortened the original nomenclature, though not on a consistent basis. Of all names, it is not surprising to discover that Aurelius/Aurelia is by far the most common, since it was the name assumed by those enfranchised under Caracalla's sweeping *Constitutio Antoniniana*. It occurs, usually in combination with another name or names, in almost one hundred cases.⁷ In some rescripts, the occupation or rank of the petitioner is indicated after his name. A few rescripts are addressed to two or three recipients, or to an unspecified number by the formulae *cuidam et aliis*. In one case the petitioners are not mentioned by name at all but referred to as *heredibus Maximae*.⁸

II STATUS AND OCCUPATION

What manner of people petitioned the emperor for rescripts?

(a) *Senators*

Three rescripts concern cases involving those of senatorial rank. In two of these cases, however, it is not the petitioner, but the petitioner's opponent who is of senatorial status. Thus, one petitioner is told that the senatorial rank of her adversary cannot of itself be used as proof that she entered into a contract with him through coercion.⁹ In the second instance, a freedwoman, whose status is subject to challenge, is told that such a case does not follow the *forum actoris*, even though her opponent is of senatorial rank.¹⁰

The third text concerns one Paulina, who is petitioning to keep her rank as a *clarissima femina*.¹¹ She is told that, not being herself of senatorial birth, she derives her rank from her former senatorial husband and must lay it aside on marrying an *eques* (*secundi ordinis vir*). The rule established by Caracalla was that any woman of senatorial

⁵ Of all the rescripts of our period from sources other than *CJ*, only four give just a single name (*FV* 284, *Cons.* 4. 9. 6. 13. 6. 15).

⁶ These examples are given in Rotondi (1922: 268).

⁷ Occurrences occupy two and a half columns in the list in Rotondi (1922: 270-1). Rotondi suggests that the inclusion of *Aurelius* as a second name in code inscriptions is not a mark of the Hermogenian Code, but can be applied equally to the Gregorian. It seems that the original Gregorian and Hermogenian codes did not differ markedly from one another in their manner of nomenclature.

⁸ *CJ* 6. 21. 14.

⁹ *CJ* 2. 19. 6.

¹⁰ *CJ* 3. 22. 3.

¹¹ *CJ* 5. 4. 10.

rank would lose it on marrying beneath her. Later in the third century, this was modified so that women of senatorial birth retained that rank in their own right, despite any marriage. But Paulina, being of (presumably) equestrian birth, gains no advantage from this development.¹²

Thus none of our petitioners can be shown to be of senatorial rank. It is possible that senatorial petitioners would receive epistolary replies to their petitions. There is no evidence for this in our period, other than a rescript (clearly on a private case) addressed *ad Maximum*.¹³ *Ad* plus the accusative is normally taken as a sign of a letter. However, this example is too ambiguous to provide much enlightenment.

One rescript of Constantine (a letter to the urban prefect on a specific case) shows the sort of unexceptional litigation that could involve those of senatorial rank. Although the text is incomplete, breaking off in mid-sentence, it is clear that one Valentinus, a minor, has suffered financially from the actions of his senatorial uncle and guardian, Exuperantius v.c.¹⁴ Without those two letters of rank after the uncle's name, this case would have remained as vague as to the quality of those involved, as happens with the majority of private rescripts.

(b) *Soldiers*

To the soldier-emperors of the third century, soldiers were important. Few of the inscriptions to the rescripts give a description in addition to the petitioner's name. But it is hardly surprising that most of those that do, carry a military term. Eleven are addressed to soldiers (*militēs*),¹⁵ one is to an *optio*,¹⁶ and two are to veterans.¹⁷ It is likely that the petitioner made a point of emphasizing that he was a soldier, in the hope of gaining a reply, and a favourable one at that. Certainly the chancery must have had a policy of including the word *militi* in the address. We would also expect soldiers to be in a good position to submit petitions. This arises from the generally positive attitude of emperors towards

¹² See Chastagnol (1982: 65–7; 1983: 257–8).

¹³ *CJ* 3. 38. 4. For epistolary reply to a petition (not certainly to a senator, though senators are concerned in the case), see *CGV* 2. 2. 1 (259?). Even closer to our period, we find a senator approaching an emperor (*CJ* 5. 72. 2—Aurelian at Byzantium). The senator in question is not the recipient of the rescript. ¹⁴ *FV* 36.

¹⁵ *CJ* 2. 3. 19, 4. 7. 3, 4. 37. 3, 4. 38. 9 + 7. 26. 8, 4. 44. 7, 4. 44. 14, 4. 52. 4, 6. 31. 4, 12. 33. 2, *Coll.* 3. 4, *Cons.* 9. 19. Note, also, a possible rescript of Constantine, the fragmentary *FV* 27, which contains the name . . . *ium Fortunatum militem*, though this is not in the dative usual for an addressee (see App. C). ¹⁶ *Cons.* 6. 17.

¹⁷ *CJ* 4. 44. 6, 10. 55. 2.

them, as well as from their close physical proximity to emperors on campaign and elsewhere.¹⁸

The proportion of these explicitly addressed rescripts is much lower for the reign of Diocletian than for earlier in the third century. The period 211–44 contains eighty-one explicit rescripts to soldiers. This represents about c.8.5 per cent of total rescripts, as opposed to c.1 per cent for Diocletian.¹⁹ It is difficult to see any reason for this difference. In the years for which most rescripts survive, Diocletian spent much of his time on the Danube frontier campaigning and so accessible to soldiers. The difference may lie solely in the uneven survival of our evidence, or in a different policy in the chancery towards describing petitioners as soldiers. Thus soldiers with a non-military case remain largely unidentifiable. Of our fourteen military recipients, nine receive replies on non-military questions, and lack any other indication of their occupation in the text of the rescript.²⁰ Without the designation *militi* in the inscription, there would be no way to identify these addressees as soldiers.²¹

Was Diocletian less well disposed towards the soldiery than his predecessors? Although the text of a rescript is not always full enough to determine whether the decision favours the petitioner, some replies are clearly favourable and some unfavourable. Thus on non-military questions, one reply is favourable: a soldier is allowed to have his father's share in a *societas* restored to him.²² Aurelius Sacratius, however, is told that he cannot make an accusation for a calumny, that said that he killed his slave, because the slave in question died after *immoderatam castigationem*. His own belief in his blamelessness in the matter is not enough to prove with certainty that the punishment was not the direct cause of death.²³ Two other replies lecture soldiers on the rescission

¹⁸ All these points are made by Campbell (1984: 269–73).

¹⁹ 1 per cent is obtained by dividing 11 by the approximate total of 1200 rescripts. The earlier figure is from Campbell (1984: 270). By emperor, he gives percentages as follows: Caracalla, 7.5 per cent; Alexander, 6 per cent; Gordian III, 13 per cent. All figures exclude veterans.

²⁰ The non-military replies are *CJ* 4. 37. 3, 4. 38. 9 + 7. 26. 8, 4. 44. 6–7, 4. 44. 14. 6. 31. 4, *Coll.* 3. 4, *Cons.* 6. 17, 9. 19.

²¹ *CJ* 4. 37. 3.

²² Cf. Campbell (1984: 298 n. 59).

²³ *Coll.* 3. 4. For a reconstruction of the circumstances behind this rescript, which are not entirely clear, see Watson (1987: 124). Constantine reduced restraints on the ability of masters to inflict severe punishments on their slaves that might result in death, but slaves were not supposed to be intentionally killed (*CTh* 9. 12. 1–2). The council of Elvira prescribed penances for mistresses whose beatings resulted in a slave's death (*Concilium Iliberitanum*, Canon 5; ed. Mansi, ii. 6).

of sale. A veteran is told that his offering twice the sale price is no justification for rescission.²⁴ Another soldier is told that the stability of completed sales is in his own interest:

nam si oblato pretio rescindere venditionem facile permittatur, eveniet, ut et si quid vos laboribus vestris a fisco nostro vel a privato comparaveritis, eadem lege conveniamini, quam vobis tribui postulatis.

For if it were easily allowed to rescind a sale once the price was paid, the result would be that, if you had gained anything by your toil from our fisc or from a private person, you too could be taken to court under the same ruling, which you demand should be granted to you.²⁵

A soldier is also told that his demand *nec militari gravitati convenit*.²⁶ Nor can the son of a soldier, who is himself *in potestate*, be regarded as outside the *potestas* of his grandfather.²⁷ Diocletian reminds one petitioner that it is illegal for him to have appointed a soldier as his *procurator*.²⁸ Proper Roman legal practices are not undermined because the petitioner is a soldier, or because soldiers are otherwise involved in the case.²⁹

On matters of military privilege, however, there is no lack of a positive disposition. One veteran, discharged on account of age, but not having completed his full term of service, has his entitlement to immunities confirmed, though he must not usurp the additional exemptions granted to those who have served the full term.³⁰ A second petitioner is told that exemptions are granted to those who served in the legions or vexillations, but that, since he served in the auxiliary cohorts, *intellegis supervacuo vacationem tibi velle flagitare* ('You realize that wishing to demand immunity for yourself is pointless').³¹ A later text similarly confirms the privileges of those from the legions and vexillations, so that such veterans do not need to appeal for their rights to be recognized.³² Another veteran, Zinima, is told that loss of his discharge papers does not lose him his privileges, provided that

²⁴ CJ 4. 44. 6. ²⁵ CJ 4. 44. 7.

²⁶ CJ 4. 52. 4; cf. 2. 50. 7 (*non decet pro disciplina militari*).

²⁷ CJ 8. 46. 7.

²⁸ CJ 4. 6. 5.

²⁹ Cf. Campbell (1984: 290): 'very few rescripts in the *Codex* grant a privilege, as distinct from the usual military privileges, to an individual soldier merely because he is a soldier'.

³⁰ CJ 10. 55. 2. ³¹ CJ 10. 55. 3. The legionaries were still singled out for privilege in the *Brigetio* Tablet, but new categories were in place by 325 (*CTh* 7. 20. 4). See letter catalogue, no. 53.

³² CJ 7. 64. 9.

some other proof of his honourable discharge can be produced.³³ *Ex-protectores* and *ex-praepositi* also have immunities provided.³⁴

Military wills are defended. Thus in one case, two brothers have made mutual wills before going into battle. The freedom of soldiers to make wills without any formalities is upheld and the surviving brother is allowed to inherit under the other's disposition, *quod principalium constitutionum prompto favore firmatur* ('this is confirmed by the ready favour of the imperial constitutions').³⁵ Two other rescripts similarly uphold military wills against rescission or invalidation.³⁶

The soldier Dizo is even told that he can recover money which he paid *evitandi tirocinii causa* (obviously unsuccessfully), and the judge is to see to the punishment of the man who extorted it from him.³⁷

Diocletian also rules in a letter that soldiers and their children are not to be subjected to torture.³⁸ In another letter, he decides that a *praepositus* should not be recalled *ab excubiis limitis* to be present at the trial of his wife for adultery, because the case is effectively decided already.³⁹

For Diocletian, soldiers are deserving. The peace described at the beginning of the Prices Edict has been gained with much sweat (of soldiers), and it is not surprising that in the emperor's perspective the typical victim of the inflation that mars that peace is a soldier.⁴⁰ Indeed, it may be that petitions complaining of high prices came from soldiers, who had ease of access to the emperor, and were thus a motivating factor in the issuing of the edict, though the comprehensive scope of goods and services it contains shows that it was certainly not a military measure.⁴¹ The emperor is displeased, therefore, when soldiers fall short of their worthy role. When those carried off into slavery outside the empire are freed *virtute militum nostrorum*, they are not to be treated as captured slaves on being brought back into the empire. Such people must be restored to their freedom, *et militem nostrum defensorem eorum*

³³ *CJ* 4. 21. 7. On the context, see Giuffrè (1984). There appears to be some conflict in the juristic sources over whether discharge was presumed to be honourable (Ulpian) or dishonourable (Macer), if not otherwise specified. Without positive proof of *honestia missio*, Zinima might therefore lose his privileges. If he offered any alternative evidence of his military record in his petition, the rescript as preserved does not acknowledge its efficacy. Nor does it otherwise make clear what alternative proofs were envisaged, though the reply would be meaningless if some alternatives did not exist.

³⁴ *CJ* 10. 48. 2. See Ch. 10 Sect. i no. 1. ³⁵ *CJ* 2. 3. 19.

³⁶ *CJ* 3. 28. 24. 6. 21. 14. Without a will, however informal, the *peculium* of a dead soldier is automatically in the power of his father (12. 36. 5). For discussion of soldier's wills with analysis of *CJ* 2. 3. 19 and 6. 21. 14, see Tellegen-Couperus (1982: 44-8).

³⁷ *CJ* 4. 7. 3. ³⁸ *CJ* 9. 41. 8 (letter no. 17). ³⁹ *CJ* 9. 9. 19 (letter no. 3).

⁴⁰ *PE pr.* 92-100. ⁴¹ See Ch. 8 Sects. iii, v, vi.

decet esse, non dominum ('It is fitting for our soldiery to be their defender, not master').⁴² The priority of the army is further demonstrated in that the first anti-Christian purges under Diocletian were confined to the military.⁴³ There is no reason therefore to think the changes in the designation of military addressees between the early and late third century are significant. And it is entirely in character that one of the few imperial *acta* preserved in the codes shows Constantine receiving a delegation of veterans, to hear their grievances and confirm their privileges.⁴⁴

(c) *Decurions*

One rescript of Diocletian and one of Constantine are addressed to a decurion designated as such, though neither on matters specific to the rank.⁴⁵ However, the questions of curial status and of liability to *munera* are a major topic of rescripts,⁴⁶ so that a large number of our petitioners fall into the curial, or more widely the *munus*-bearing, category (ranging from the wealthy members in the *ordines* of major cities down to village officials). Many of these petitions are in effect requesting *beneficia*, since the petitioner is always hoping for exemption and the matter is essentially one-sided. Thus the finer points of Roman civil law are not necessarily relevant.⁴⁷ However, curial questions also involve other issues. Is someone a slave and does it make a difference whether he held civic office with or without knowledge of his own true status?⁴⁸ Can a father be liable for the actions in office of a son *in potestate* (and vice versa)?⁴⁹ At least one of the *magistri libellorum* of the period wrote a work *De Muneribus*, and judging from the rescripts, he would have had plenty of practical experience of dealing with civic problems.⁵⁰

⁴² *CJ* 8. 50. 12. ⁴³ Lact. *DMP* 10. 4.

⁴⁴ *CTh* 7. 20. 2 (Ch. 10 Sect. i no. 4).

⁴⁵ *CJ* 2. 53. 3 (Proculus); *FIRA*² i no. 96 (Agrippinus, correctly identified by Millar 1977: 245), text in Greek, dated c.326/33.

⁴⁶ In *CTh* the title *de decurionibus* (12. 1) alone has 192 constitutions, more than any other title. On this topic, see Millar (1983) and Bruschi (1984).

⁴⁷ See Millar (1983: 77) stressing the beneficial ideology and the implications beyond those of Roman civil and criminal law.

⁴⁸ *CJ* 10. 33. 2. For this question, see Sect. *e* below.

⁴⁹ *CJ* 4. 13. 2-4, 10. 32. 5, 10. 62. 4 (cf. Hermogenian at *D* 50. 5. 11).

⁵⁰ See the extract from this work of Arcadius Charisius at *D* 50. 4. 18, with Pólay (1982) and Liebs (1987: 132-3). The surviving writings of Hermogenian also contain extracts on this topic. See Lenel (1889: i. 266-7) under the title *ad municipalem*, esp. no. 16 = *D* 50. 4. 1.

As far as exemptions from *munera* are concerned, almost every conceivable excuse was proffered to the emperor in the attempt to win immunity, and petitioners show no shyness in approaching the emperor on this matter and even attempt to deceive him. Thus Constantine writes to Dalmatius:

Quoniam cognovimus nonnullos vacationem a nobis impetrasse personalium munerum, alienos pro suis liberis nostris conspectibus offerentes, iubemus eos, cum hoc probatum sit, indulto beneficio privari . . .

Since we have discovered that a number of people have petitioned for immunity from personal *munera*, presenting the children of others as their own before our sight, we order that they be deprived of the benefit granted, if this should be proved . . .⁵¹

However, the presence of these burdened classes in considerable numbers among petitioners is not interesting for that fact alone. Many of the petitioners reveal other items of information regarding their condition and occupation.

Thus failed petitioners for exemptions include a philosopher,⁵² a water-organist,⁵³ a *venator*,⁵⁴ a *calculator*,⁵⁵ and a freedman.⁵⁶ Illiteracy is no bar to undertaking the *munera* of a decurion.⁵⁷ One female petitioner, called Marcia, is denied exemption from patrimonial *munera* on the grounds of her sex, but is granted immunity from personal *munera*, for having five surviving children.⁵⁸ A doctor is told that he has no automatic immunity, but must obtain a decree from the decurions.⁵⁹

⁵¹ CTh 12. 17. 1. ⁵² CJ 10. 42. 6. ⁵³ CJ 10. 48. 4.

⁵⁴ CJ 10. 48. 6. *Venatores* were on occasion entitled to immunities from the more burdensome *munera* (D 50. 6. 7).

⁵⁵ CJ 10. 58. 1.

⁵⁶ CJ 10. 53. 4.

⁵⁷ CJ 10. 32. 6. Harris (1989: 313–14) supposes that this rescript was a response to a suddenly increasing phenomenon, perhaps as the better-off and better-educated gained immunities, and their liabilities were shifted on to those on the fringes of the propertied classes. The definition of illiteracy is quite difficult and may represent total illiteracy, slowness in writing or partial illiteracy, or even literacy in Egyptian but not Greek. Semi-literacy was not unusual among those undertaking *munera* at village level in Egypt. The best-known tetrarchic example is Aurelius Isidorus (*P. Cair. Isid.* 76. 21–2, 77. 29–30, 78. 20). A full list of the *munera* that he bore between 298/9 and 318/19 is given by Boak and Youtie (1960: 16). Isidorus seems to have been innumerate, but minimally able to read and write (Hanson 1991: 184–7; Hopkins 1991: 156 n. 55); cf. the famous case of Petaus in H. C. Youtie (1966). Illiteracy, of course, is no bar to having a petition composed and presented (e.g. *P. Oxy.* 3574).

⁵⁸ CJ 10. 42. 9, 10. 52. 5; cf. *P. Oxy.* 3302 (c.300/1) and *P. Wisc.* 58 lines 5–6 (Apr. 298), where a woman is described as without a tutor, because of the '*ius liberorum* according to Roman custom'. Note that the *ius liberorum* was probably granted for surviving, not ever-born, children. See Parkin (1992: 116–19).

⁵⁹ CJ 10. 53. 5. The emperors also reaffirm the immunities of *liberalium studiorum professores* and *medici*, subject to curial approval (CJ 10. 47. 1, 10. 53. 4).

More successful petitioners include law students at Beirut,⁶⁰ victorious athletes and performers at certain games,⁶¹ the *cohortales* of Syria,⁶² and veterans (the latter already detailed in the section on soldiers above). Two septuagenarians receive replies confirming exemptions on the grounds of age,⁶³ but a man over 50 has not yet reached the threshold for immunity.⁶⁴ But even a grant of exemption is not necessarily an end to difficulties. One petitioner is told that, although already granted exemption by the emperors, he has effectively given his consent to holding onerous office, if he did not invoke this privilege at the time of nomination.⁶⁵ Aurelius Plutarchus, however, having petitioned the emperors and been granted the rank of *vir egregius*, carrying with it exemption, successfully invokes his privilege when nominated to the *decaprotia*.⁶⁶

We even gain glimpses of the most personal nature. One man appears to have lost his sight.⁶⁷ Three petitioners try to use gout as an excuse preventing the execution of personal *munera*,⁶⁸ and one even tries to use his father's illness in a similar manner.⁶⁹

Trophimus is told that having acted in fear of being nominated for *munera* is not sufficient excuse for rescission of sale.⁷⁰

Another group of rescripts can be considered under this heading. These refer to the *primpili pastus*, a civil fiscal obligation laid upon provincial *officiales* concerned with raising taxation for the military *annona*.⁷¹ Of seven rescripts in which this is mentioned, only one does

⁶⁰ *CJ* 10. 50. 1; cf. 10. 50. 2.

⁶¹ *CJ* 10. 54. 1 and *Chr.* ii no. 381; cf. Malalas 12. 310, where victorious athletes at Antioch receive *sacras* (documents of privilege/exemption?) from Diocletian.

⁶² *CTh* 8. 4. 11. This is a law of Valens reiterating privileges granted (*porrecta atque concessa*) by Diocletian. It is, of course, impossible to tell whether Diocletian was petitioned at any time either for the original grant or for its confirmation.

⁶³ *CJ* 10. 32. 10:—a son petitions for exemption from *munera personalia* for his father aged over 70. *CJ* 10. 50. 3:—this text refers to an age-limit of 55, which Cuiacius thought a mistake for 70, since the petitioner is aged over 70 (see Krüger ad loc.). However, 55 is correct, since although those over 70 were no longer liable to *munera*, those over 55 could not be nominated to the *curia* against their will (see *D* 50. 2. 2. 8, 50. 2. 11). In this rescript, the legal point concerns forced nominations over the age of 55, although the petitioner's actual age happens to be over 70. I am grateful to Dr T. G. Parkin of the Victoria University of Wellington for unravelling the implications of these rescripts. For Constantine and age exemptions, see edict catalogue, no. 56.

⁶⁴ *CJ* 7. 62. 7. Such a restriction does not apply to veterans.

⁶⁵ *P. Oxy.* 1204 (299). See Millar (1983: 91–2).

⁶⁷ *CJ* 10. 32. 8.

⁶⁸ *CJ* 10. 51. 2 (*articulari morbo*), 10. 32. 13 and 10. 51. 3 (*podagrae valitudo*); cf. *CJ* 2. 4. 27, an attempt to use illness as an excuse for rescission of a compromise.

⁶⁹ *CJ* 10. 51. 4.

⁷⁰ *CJ* 2. 19. 8.

⁷¹ See Carrié (1979). The military *primuspilus* had probably disappeared by the reign of Aurelian.

not refer to the financial burden or indebtedness to the fisc that was concomitant with the post.⁷² The emperor even describes one petitioner as *honori primipilari adstrictus*.⁷³ Only two of these texts permit the unequivocal identification of the petitioner with the *primipilaris*.⁷⁴ Immunities and rewards, however, seem to have been open to those who had fulfilled their obligations.⁷⁵

One *CJ* text records leading Antiochenes at a hearing before Diocletian, where he guarantees immunities of ex-military personnel that are hardly to the advantage of the local *curia*.⁷⁶ Indeed, Diocletian later dealt harshly with the Antiochene leaders, who on their own initiative had the effrontery to demonstrate their loyalty by raising a force and defeating a revolt in Syria. It may be that they were considered responsible for any disturbance in their area, irrespective of the circumstances.⁷⁷ Diocletian does however uphold the immunity of decurion families from the punishments or inquisitorial torture appropriate to *humiliores*.⁷⁸ He also sustains the bar upon freedmen holding office, unless they have the gold ring or are notionally 'restored' to free birth.⁷⁹ Nor can those tainted with *infamia* enter the *curia*,⁸⁰ though they cannot thereby avoid *munera*; *infamia* confers neither privilege of rank nor exemption from burdens.⁸¹ Constantine is also found in contact with decurions, sending a letter to those of Cologne on the curial liabilities of Jews.⁸²

⁷² The exception is *CJ* 12. 62. 2, where it is said that status as *primipilus* cannot be used to determine the location of a trial. ⁷³ *FV* 278.

⁷⁴ *CJ* 4. 9. 1 and *FV* 278. The other texts are *CJ* 4. 31. 11 (describing the office as *onus primipili*), 5. 16. 15, 12. 62. 2-4. Note that the missing date of 12. 62. 3 may be restored as 287 on the basis of a papyrus fragment of *CJ* (Amelotti and Migliardi Zingale 1985: 29).

⁷⁵ e.g. *CTh* 8. 4. 3 (Licinius allows possession of equestrian rank to ex-*primipilares*); cf. *CTh* 8. 4. 11, where Valens confirms immunities following the completion of the *primipili pastus*, apparently (though not necessarily) in accordance with the grant of Diocletian to the *cohortales* of Syria mentioned above.

⁷⁶ *CJ* 10. 48. 2. See Ch. 10 Sect. i no. 1.

⁷⁷ On this incident, see Liebeschuetz (1972: 103).

⁷⁸ *CJ* 9. 47. 11 (*eminentissimi* and *perfectissimi*, i.e. higher equestrians, down to their great-grandchildren (according to Marcus Aurelius), are exempt from *plebeiorum poenis vel quaestionibus*, but only if there is no stain in the intervening generations; similarly for decurions and their children, according to Ulpian; cf. *D* 50. 2. 2. 2), 9. 47. 12 (decurions' sons are not to be thrown to the beasts), 10. 32. 4 (an adopted son of a decurion is entitled to the protection of curial rank). For a successful invocation of curial rank against torture, see the case of Ingentius of Ziqua before the proconsul Aelianus at Optatus, *App.* II (ed. Ziwsa, 203); cf. Augustine, *Ep.* 88. 4. Lactantius accuses Galerius of allowing the torture of decurions and also equestrians in even minor civil cases (*DMP* 21. 3).

⁸⁰ *CJ* 10. 32. 8.

⁸¹ *CJ* 10. 32. 12, 10. 59. 1.

⁸² *CTh* 16. 8. 3.

Rescripts relating directly to matters of city administration are much rarer than the question of curial duties. One text, however, deserves mention. The petitioner (presumably a protesting civic official) is told that there is nothing wrong in the provincial governor ordering that funds be applied to the repair of the city walls, before any money can be spent on the giving of games. It is a sign of the times, that the holding of games and festivals, so crucial to civic identity, had to defer to the pressing needs of defence.⁸³

Thus in a variety of contexts, decurions and their concerns are a prominent feature in dealings with the emperor.

(d) *Women*⁸⁴

Women are often notable in ancient sources by their absence. The third-century rescripts are an exception to this tendency.⁸⁵ The number of female recipients is far more than nominal, in despite of legal notions of their *infirmis sexus*. Based upon the figures provided by Huchthausen,⁸⁶ the proportion of female petitioners rises from 19 per cent for earlier in the third century to 31 per cent for the reign of Diocletian. The total of rescripts that she uses as a basis for her calculations looks rather low,⁸⁷ but since she also excludes rescripts outside *CJ* (with a high proportion of female recipients), a recalculation of the figure for the reign of Diocletian gives a broadly similar result of 29 per cent.⁸⁸ This degree of female presence among the rescripts is as high as the most favourable figures from other ancient evidence. Names from Epirus and Illyria, where women are thought to have enjoyed a higher than usual social prominence, give some of the highest known percentages of female names; 20 per cent overall, rising to 33 per cent in a collection of manumission documents.⁸⁹ Other Roman evidence shows

⁸³ *CJ* 11. 42. 1.

⁸⁴ A complete list of female recipients of Diocletianic rescripts in *CJ* is given in code order by Huchthausen (1976: 76–85).

⁸⁵ For the 3rd cent. in general and before Diocletian, see Volterra (1973a), Huchthausen (1974a), Sternberg (1985), and Marshall (1989); also comments by Watson (1974: 1126). For the reign of Diocletian, see Huchthausen (1976).

⁸⁶ 1974a: 200; 1976: 55.

⁸⁷ Huchthausen's figures are also doubted by Sternberg (1985: 510 n. 22).

⁸⁸ The figures for women are: 340 (from *CJ* according to Huchthausen) + 16 (from outside *CJ*) = 356; for total recipients: 1220 (Honoré, *EL*² 141, 146–8, and paligenesia, less rescripts of Carus, Carinus, and Numerian, 1248 less 28). Therefore 356 + 1220 = 29.18%.

⁸⁹ See E. Matthews (1993: 177). The manumission figure applies to owners. Women form more than half the manumitted slaves; cf. statistics from Delphi in Hopkins (1978: 139–40).

women forming up to a third of clay-yard owners around Rome.⁹⁰ That something between a fifth and a third of all Diocletianic recipients are women is thus highly significant. Of course, as always with statistics from the rescripts, the uneven chronological spread makes firm inferences hazardous. What cannot be denied is that women are very ready to take part in litigation and are not afraid of approaching the emperor, exhibiting this propensity to an even greater degree under the rule of Diocletian. Calpurnia Aristaeneta is so dissatisfied with her first rescript reply, that she petitions Maximian for an improved second version.⁹¹ In the fourth century, three of the four named recipients of private rescripts of Constantine are women,⁹² as are two of the three under Valentinian I.⁹³ It is a woman who disputes with Constantine in a unique trial record from *CTh*.⁹⁴ We are also reminded that many terms have specific female forms, such as *conductrix*,⁹⁵ *donatrix*,⁹⁶ *venditrix*,⁹⁷ and *creditrrix*.⁹⁸

Some of the texts relate to matters that are specific to women, sometimes dealing with basic matters of their legal capacity, or limitations upon it. Thus Dionysia is told:

Alienam suscipere defensionem virile officium est et ultra sexum muliebrem esse constat. Filio itaque tuo, si pupillus est, tutorem pete.

It is a man's place to undertake another's defence and is agreed to be beyond the female sex. And so, if your son is under age, apply for a *tutor* for him.⁹⁹

The emperors explain to Corinthia that a woman is not allowed to bring criminal accusations except for certain reasons, laid down in ancient statute, and this is not decided by the imperial subscription. She must approach the provincial governor, who will consider whether the case is of a type such as a woman can bring.¹⁰⁰ Even within this right, the emperor tells one Aelia that she can prosecute her son for attempting to murder her, *si pietas et ratio naturalis animi tui non revocat intentionem* ('if piety and your mind's natural reason do not reverse your intention').¹⁰¹ Diocletian allows a woman to adopt her stepson. He

⁹⁰ Cited by Gardner (1986: 18). The women are mostly of high rank (imperial or senatorial). ⁹¹ *FV* 282.

⁹² *FV* 33, 34, 274. ⁹³ *Cons.* 9, 5–6.

⁹⁴ *CTh* 8, 15, 1. See Ch. 10 Sect. i no. 5. On women in court, see Marshall (1989). For some of Constantine's views of feminine legal inadequacy, see *CJ* 2, 12, 21 and 5, 37, 22, 5, *CTh* 3, 16, 1 and 9, 1, 3; also *CTh* 9, 24, 1, on which see Evans-Grubbs (1989). For a general discussion, see Evans-Grubbs (1993a: 136–7).

⁹⁵ *CJ* 3, 33, 10, 4, 65, 24, 5, 12, 18.

⁹⁶ *CJ* 7, 10, 5.

⁹⁷ *CJ* 4, 51, 3.

⁹⁸ *CJ* 8, 25, 7.

⁹⁹ *CJ* 2, 12, 18.

¹⁰⁰ *CJ* 9, 1, 12.

¹⁰¹ *CJ* 9, 1, 14.

restates the rule that women cannot adopt by *adrogatio*, but makes an exception in her case, because she has lost her own sons (*in solacium amissorum tuorum filiorum*).¹⁰²

It is not only, or even especially, women who have an interest in seeking rulings on questions of female legal standing. It is a male recipient who is told that a female rape victim is not debarred from marriage.¹⁰³ Of eight replies under the title *ad senatus consultum Velleianum*, which forbade women to assume liability for other persons, three are to women and five to men.¹⁰⁴

Other matters raised in the rescripts include two already noted above, those of Paulina and her attempt to retain clarissimate rank, and Marcia trying to gain exemption from *munera* as being a woman.¹⁰⁵ In cases of divorce, the emperors inform Caelestina that, although there is no existing provision for the custody of children to be divided between the parents according to sex, in this instance the governor can make his own decision as to whether the father or mother should have custody.¹⁰⁶

Most of the cases however are straightforward civil disputes, or indeed more narrowly, money and property matters, where the sex of the litigants is largely irrelevant. Fifty per cent of female recipients are involved in cases of inheritance or business dealings alone,¹⁰⁷ and most of the rest concern other aspects of property. Details of their exact interests are lacking, but include owning houses, *praedia*, *fundi*,¹⁰⁸ ships,¹⁰⁹ and making nautical loans.¹¹⁰ Thus women are negligible neither as property-owners nor as litigants.

(e) Slaves and Freedmen

Although the law of slavery was extensive and complex, the legal capacity of slaves was severely limited.¹¹¹ In general, slaves should not

¹⁰² CJ 8. 47. 5. This is discussed in Ch. 3 Sect. iii. Diocletian also allows a woman to be adrogated (8. 47. 8).

¹⁰³ CJ 9. 9. 20.
¹⁰⁴ CJ 4. 29. 13–20. On the *senatus consultum* and the whole question of 'womanly weakness' (*infirmitas sexus*) right up into the Byzantine period, see Dixon (1984), Crook (1986), Saradi-Mendelovici (1990), and Clark (1993: 56–62).

¹⁰⁵ CJ 5. 4. 10, 10. 42. 9, 10. 52. 5.
¹⁰⁶ CJ 5. 24. 1. See Treggiari (1991: 469).

¹⁰⁷ Huchthausen (1976: 63) 21.6 per cent and 28.1 per cent respectively.

¹⁰⁸ Huchthausen (1976: 76–85) notes which women were concerned with *praedia*, *fundi*, etc. against their names in her list.

¹⁰⁹ CJ 4. 25. 4. For other women shipowners, see Frank (1940: 272).

¹¹⁰ CJ 4. 33. 3–4.

¹¹¹ Thus CJ 3. 41. 5 *inter servum et liberum civile iudicium consistere non possit* (cf. 3. 1. 7) and a few exceptions listed by Hermogenian (*D* 5. 1. 53), who states *Vix certis ex causis adversus dominos servis consistere permisum est*. Nor can a slave be a tutor or curator (CJ 5. 34. 5).

petition the emperor. Diocletian states as much, before explaining to a slave recipient, why in her/his case he makes an exception:

Licet servilis condicio deferendae precis facile capax non sit, tamen admissi sceleris atrocitas et laudabilis fidei exemplum super vindicanda caede domini tui hortamento fuit, ut praefecto praetorio iuxta adnotationis nostrae decretum demandaremus (quem adire cura), ut auditis his, quae in libello contulisti, et reos investigare et severissimam vindictam iuxta legum censuram exigere curet.

Although servile status does not easily have the capacity for presenting petitions, however, the terrible nature of the admitted crime and the example of praiseworthy fidelity in seeking vengeance for the murder of your master has impelled us to order the praetorian prefect (whom you should approach) in accordance with the decision of our *adnotatio* to see to it that he hears what you have alleged in your petition, investigates the accused, and exacts the most severe punishment according to the strict judgement of the law.¹¹²

Later, no doubt after the conclusion of the case, it is clear that the slave petitions for freedom as the appropriate reward and receives a second rescript, being addressed as follows:

Quoniam religiosa sollicitudo ad augendam provocandamque fidei observationem iuris praemio adfici debet, si ad ulciscendam caedem domini incorruptis probationibus ac strenuo nisu constiteris, libertatem, quam his qui dominorum caedem vindicant iam pridem senatus consulto et statutis principum praestari sancitum est, etiam tu pro tam ingentibus meritis non ex ipso facto, sed aditione et sententia praesidis reportabis.

Since righteous care should be applied to the increase and encouragement of the keeping of faith by means of legal rewards, if you have strived for the avenging of your master's murder with incontrovertible proofs and keen effort, the freedom, which *senatus consultum* and imperial decrees have previously allowed to be granted to the avenger of a master's murder, this you also will gain, because you greatly deserve it; not automatically, however, but by approaching the governor for his judgement.¹¹³

This affair, therefore, demonstrates two possible situations enabling a slave to communicate with the emperor. Of the two, however, questions of freedom are the most frequent.¹¹⁴ Other slaves receive rescripts on

¹¹² *CJ* 1. 19. 1.

¹¹³ *CJ* 7. 13. 1. The first rescript is addressed to Firmina on 8 Oct. 290, the second to Firminus on 7 Dec. The near coincidence of subject, name, and date makes the association of the two rescripts plausible.

¹¹⁴ Hermogenian at *D* 5. 1. 53 notes the limited number of situations enabling a slave to take his master to court, all on matters concerning his freedom. Huchthausen (1974b) emphasizes the importance of freedom and the fierceness of the battles over it.

this matter. Three slaves gain replies *de fideicommissariis libertatibus*,¹¹⁵ another on a problem arising from having written his own freedom (in a will) on his master's instructions.¹¹⁶

It is the question of freedom that is the main ingredient in rescripts concerning *liberti* as well. This is logical, since the rescripts are only likely to notice *libertinitas* when it is challenged. Where it is not an issue, the text will not allude to it. And questions of status, of *ingenuitas* and *libertinitas*, were considered of such importance that the provincial governor was forbidden to appoint *pedanei iudices* for these cases, but had to reserve them for himself.¹¹⁷ The use of torture was also considered necessary in such cases lest *alieni forte sordidae stirpis splendidis et ingenuis natalibus audeant subrogari* ('lest aliens of vile stock should dare to take the place of those of distinguished free birth').¹¹⁸ It also seems to be the mark of a tyrannical regime that no attempt is made to observe the correct respect for status, so that free people frequently find themselves enslaved, in despite of their free birth.¹¹⁹

Under the title *de liberali causa* (CJ 7. 16) alone, there are over thirty Diocletianic rescripts, though not all addressed to freedmen. People whose status is challenged include even holders of and aspirants to office. In one case, it appears that a slave may have held the civic aedileship,¹²⁰ in another, the status of a *limenarch* is challenged.¹²¹ Licinius sends a rescript to the governor of Cappadocia concerning the investigation into the disputed free birth of the *principalis* Aelius.¹²² Faustinus is told that the fact that his father held office does not prove that his father was not a slave, and thus his own status is still open to question.¹²³ Maximian tells Philadelphus, a municipal freedman who administered the archives, that a law extended to the provinces in AD 129 protects his liberty. Thus his son is free-born and can become a *decurion*, although, were this not so, only the emperor (not the local *ordo*) could restore the necessary notional free birth.¹²⁴ This arises,

¹¹⁵ CJ 7. 4. 11-13. The first of these is told that he can approach the governor to establish his right to manumission.

¹¹⁶ CJ 9. 23. 6. The unfortunate slave does not gain his freedom. On questions of *manmissio mortis causa*, see Tellegen-Couperus (1982: 130-49).

¹¹⁷ CJ 3. 3. 2 (edict catalogue, no. 1b).

¹¹⁸ CJ 9. 41. 9 (letter catalogue, no. 8); cf. CJ 7. 20. 1, where a daughter is complaining of the false claims to free-born status of her mother's cohabiting slave (Evans-Grubbs 1993b: 138-9).

¹¹⁹ CJ 7. 14. 4 (Palmyrene domination); CTh 5. 8. 1 (Maxentius); Eus. VC 2. 32 and 2. 34 (Constantine on Licinius); cf. Lact. DMP 21. 4.

¹²¹ CJ 7. 16. 38.

¹²² CJ 7. 16. 41.

¹²³ CJ 7. 16. 11.

¹²⁴ CJ 7. 9. 3 + 6. 8. 1. This rescript was issued from Ravenna.

since those of servile origin can only aspire to office if the emperor grants them the right to wear a gold ring and notional free birth.¹²⁵ Licinius even had to legislate to stop the slave *monetarii* from usurping equestrian rank.¹²⁶

When the status of a freedman is under review, the subject is treated as free in the mean time.¹²⁷ Such a petitioner, receiving a rescript, is not a true slave recipient, even if the final decision should confirm his servile status. One petitioner, already carrying an appropriate free nomenclature, Aurelia Dionysia, is told that she was wrong to use her *peculium* to have herself bought by another (in order to be freed), since money from the *peculium* could not constitute valid payment without her master's knowledge. Thus he has the right either to recover her as a slave, or to claim the price that should have been paid.¹²⁸

In one case, even the possibility of freedom is absent. The enslaved descendants of bandit families are denied any chance of liberty.¹²⁹

The other topic to concern *liberti* is their continuing relationship with their former master, now their patron. For instance, Diocletian addresses one petitioner, *Nec patronae tuae obsequiis refragari te fas est* ('It is not right for you to refuse obedience to your *patrona*').¹³⁰ But he tells another that there are limits to the demands of a patron.¹³¹

Slaves or freedmen cannot be identified by nomenclature. For instance, the classic slave name, Onesimus/Onesima, occurs six times in Diocletian's constitutions,¹³² but in no case is the context such as to enable the identification of the recipient as a slave or freedman.

Thus persons of servile origin are not infrequent among the petitioners to the emperor, and comparison of the numbers involved suggests that, like women, they are even more ready to approach the

¹²⁵ *CJ* 6. 8. 2, 9. 21. 1, 10. 33. 1. ¹²⁶ *CTh* 10. 20. 1. ¹²⁷ *CJ* 7. 16. 14.

¹²⁸ *CJ* 4. 36. 1. A slave could use his *peculium* to buy his freedom from his master, but also to have himself bought and freed by another (*suus nummis emptus*), and if manumission were delayed or denied, it automatically came into effect or could be enforced by a magistrate. See e.g. Hermogenian at *D* 5. 1. 53; also *CJ* 4. 6. 9 (294) and 7. 16. 8 (286), both of which state: *aditus rector provinciae hortabitur eum/dominum salva reverentia . . . placito suo stare*; in both these cases, the petitioners are parents trying to secure the freedom of their children. The issue in Dionysia's case is that she used money from the *peculium* without her master's knowledge, so that he was in effect being paid for his own slave with his own money! Cf. *CJ* 4. 49. 7 (293), addressed to Diodorus as a slave-owner: *pretium de peculio . . . nesciens unde solveretur accepisti* . . . The *peculium* could only be used in this manner if this was done collusively with the slave's owner. ¹²⁹ *CJ* 7. 18. 2.

¹³⁰ *CJ* 6. 6. 8.

¹³¹ *CJ* 6. 3. 12. There may be some interpolation in this rescript. See Amelotti (1960: 115–16). ¹³² *CJ* 4. 25. 6, 5. 4. 13, 5. 39. 5, 6. 20. 9, 7. 30. 2, and *FV* 312.

emperors under the tetrarchy than earlier in the third century and the emperors are in general ready to reply.¹³³

(f) Other Recipients

These categories are the major identifiable groups among the recipients.

There are a few additional items to note that illuminate aspects of the lives and occupations of the petitioners. One rescript is addressed to Aurelius *archiatrus*, who has been unable to attend to his affairs because of his service with the *comitatus*. The emperor appoints the praetorian prefect to hear the dispute between him and his opponents.¹³⁴ One Tiberius, presumably of mathematical bent, is told that it is fine to teach and practise geometry, but not astrology.¹³⁵ Another petitioner is told that his brothers are not subject to *infamia*, if they appeared on the stage while minors.¹³⁶

A group of almost twenty rescripts also reflects some of the hazards of life near the frontiers. These deal with *postliminium* and its problems.¹³⁷ Persons captured and carried off into slavery outside the empire were slaves in Roman eyes as well. But subsequent release and return to imperial territory reactivated their citizenship rights, at least in many cases, which created much material for litigation.

(g) General Observations

Some generalizations are appropriate at this point. Most of the civil litigation that lies behind the petitions is concerned with money and property. Testamentary dispositions, intestacy, trusts, dowries, loans, pledges, donations,¹³⁸ and contracts, all these generate conflict. Indeed,

¹³³ Thus Huchthausen (1974b). ¹³⁴ *CJ* 7. 35. 2. See letter catalogue, no. D1.

¹³⁵ *CJ* 9. 18. 2. Like the emperor Tiberius (the recipient's namesake), Diocletian himself took such matters seriously (all the more reason to control their occurrence). Lactantius describes him as *pro timore scrutator rerum futurarum* (*DMP* 10. 1); cf. *imminentium scrutator* (Aurelius Victor, *Caes.* 39. 48). ¹³⁶ *CJ* 2. 11. 21.

¹³⁷ *CJ* 2. 53. 5, 7. 14. 9, 7. 35. 6, 8. 50. 3–18. For physical danger from *latrones* within the empire, see 5. 31. 8; cf. 9. 2. 11, a letter to the governor of Phoenice, where 'shepherd' and 'bandit' appear interchangeable terms. Note also an inscription from Carian Stratonicea, in which the 'illuminating' presence of Maximinus is described as restraining banditry (M. C. Şahin 1981: 170–1, no. 310); cf. a probably contemporary letter from Lycia (letter catalogue, no. 56). On bandits (including the Diocletianic Bagaudae) and on the problems of defining them, see MacMullen (1966, ch. 6 and pp. 255–68), Hopwood (1989), and Drinkwater (1989; with bibliography).

¹³⁸ Note Constantine's comment: *Multas saepe natas ex donatione causas cognovimus, in quibus vel adumbrata pro expressis vel inchoata pro perfectis vel plurima pro omnibus controversiam faciant* . . . (*FV* 249).

inheritance alone seems to have been regarded as the most likely provider of wealth, according to the horoscopes typical in Firmicus Maternus.¹³⁹ Such matters are, therefore, a fruitful source of litigation. It seems reasonable to suppose that the greater the amounts involved, the greater the likelihood of legal action, itself an expensive process; and the financial interest at stake in a case must be all the larger to justify the additional time, effort, and cost involved in petitioning for an imperial rescript (where one was deemed necessary); unless, that is, the emperor was close by and accessible. But quite where one places the threshold of wealth, above which most petitioners should be found, is an unanswerable question.

As on so many subjects, the rescripts are unenlightening as to the scale of fortunes involved in the cases. Sums of money are not mentioned, references being to *pecunia* with no quantification.¹⁴⁰ Only one rescript specifies the sum at issue as one hundred *aurei*, the penalty for not fulfilling an agreed manumission.¹⁴¹ In the light of such a dearth, one text is almost eloquent in telling us that the property in question is *vestem et argenti materiam*,¹⁴² and there are scattered allusions to unknown sums of gold or silver.¹⁴³ There are references to animals,¹⁴⁴ houses,¹⁴⁵ gardens,¹⁴⁶ vineyards,¹⁴⁷ *horrea*,¹⁴⁸ oil,¹⁴⁹ wine,¹⁵⁰ meat,¹⁵¹ and even a bath-building.¹⁵² But these are not detailed descriptions, while remaining references talk vaguely of *praedia* or *fundi*.¹⁵³

¹³⁹ MacMullen (1971: 115).

¹⁴⁰ Hermogenian states that *pecunia* need not mean coin (*pecunia numerata*) but almost any property or legal right (*D* 50. 16. 222).

¹⁴¹ *CJ* 4. 57. 6 (293). At the date of this rescript, *aurei* were struck at a variety of weights, though 70 and 60 to the pound were the most common (*RIC* v/2. 207). The reform of the coinage is dated to the following year, 294 (*RIC* vi. 1-2), from which time *aurei* were struck at 60 to the pound (*RIC* vi. 93-4). 100 *aurei* should have been equivalent to something in between one and a half and one and two-thirds of a pound of gold.

¹⁴² *Coll.* 10. 4. ¹⁴³ *CJ* 4. 2. 8-9, 4. 45. 2, 9. 9. 23.

¹⁴⁴ *CJ* 3. 35. 5, 4. 7. 7, 4. 44. 9, 4. 49. 16, 6. 38. 2 (all *pecus*); 4. 26. 10 (*equae cum fenu*); the single *bos* of 4. 23. 1 would have a ceiling price of 10,000 *denarii* according to *PE* 30. 14. For dispute over animal manure, see *CJ* 6. 38. 2.

¹⁴⁵ *CJ* 3. 32. 14, 16, 19, 4. 64. 5, 5. 16. 19 (all *domus*); 4. 65. 29, 11. 30. 4 (*aedificia*). On party-walls between houses, see *CJ* 3. 34. 8-9. ¹⁴⁶ *CJ* 2. 19. 8.

¹⁴⁷ *CJ* 4. 38. 8, 7. 32. 6. ¹⁴⁸ *CJ* 4. 24. 9.

¹⁴⁹ *CJ* 1. 18. 6, 4. 2. 5, 4. 32. 23, 4. 50. 7, 4. 64. 7, 4. 65. 21.

¹⁵⁰ *CJ* 4. 2. 10, 4. 49. 12. ¹⁵¹ *CJ* 4. 49. 10.

¹⁵² *CJ* 8. 10. 5. The petitioner's opponent has built baths (since collapsed) on the petitioner's property.

¹⁵³ These references are sometimes qualified; e.g. *fundum cum mancipiis* (*CJ* 2. 36. 3). But note *deserta praedia* at 4. 46. 2 (cf. *emphyteutica*, 5. 71. 13, 11. 62. 1). For a survey of terms used for agricultural property, livestock, etc. in legal texts (mainly drawing on the *Digest*), see Buck (1983: 9-33).

The freedom of individual slaves and freedmen is of sufficient concern to slave-owners to be challenged on numerous occasions. Although this is not necessarily on account of the intrinsic value of a slave as property alone, it is sometimes clearly so. Where a slave is left as a pledge and dies,¹⁵⁴ the question of who bears the loss is narrowly financial. Thus the value of an individual slave was enough to engender litigation and petitions to the emperor. According to the limits set in the Prices Edict, a slave could be worth up to 70,000 *denarii* (almost a pound of gold), but the lowest ceiling price was only 10,000 *denarii*, though the fit and skilled slave presumed by the former price and the old slave by the latter are extremes.¹⁵⁵ It is interesting to note that even the upper limit here is less than the 100 *aurei* stated as the penalty for failed manumission cited above.

There is, of course, no explicit record of anyone failing to petition owing to lack of funds. Disasters such as fire,¹⁵⁶ the ravages of locusts,¹⁵⁷ or shipwreck¹⁵⁸ are mentioned, but are not necessarily a problem of the petitioner rather than his opponent. Even where they do directly effect him, they are not associated with complete ruin. But some petitioners are in severe financial difficulties. A number of rescripts deal with excessive donations, such as the reply to Cottabeus, who gave all his wealth to his son (*totas facultates tuas per donationes vacuefecisti*).¹⁵⁹ In these situations, however, it is not necessarily the impoverished party who appeals, but some relative.¹⁶⁰

We need not suppose that a slave petitioner was automatically poor, since a slave's *peculium*, though not owned absolutely, was under his effective control and could be of considerable size.¹⁶¹ Some of our petitioners must at least have had *peculia* sufficient for the purchase of their own freedom.¹⁶²

Our petitioners are in general, therefore, people with enough financial interest to make litigation worthwhile. They represent ranks both

¹⁵⁴ *CJ* 8. 13. 25.

¹⁵⁵ *PE* 29. 1a, 8: a male slave or eunuch aged 16-40 is given a maximum of 35,000 *denarii* (*PEaph* 29. 1a), doubled to 70,000 for a skilled slave. The lowest ceiling price of 10,000 *denarii* is for a female slave aged 60-80 (*PE* 29. 7).

¹⁵⁶ *CJ* 4. 2. 11, 4. 48. 5 (= *FV* 23).

¹⁵⁷ *CJ* 4. 65. 18. The petitioner is seeking rent from ravaged land and his tenant is only allowed remission for the year of the locust plague. ¹⁵⁸ *CJ* 4. 33. 5.

¹⁵⁹ *CJ* 3. 29. 5. ¹⁶⁰ *CJ* 3. 29. 4 = *FV* 282.

¹⁶¹ Good contemporary examples are lacking. An earlier example is Onesimus, public slave at Balboura in the mid-2nd cent., who built a temple and an exedra, and funded a corn dole from his resources. See inscriptions edited with comments by N. P. Milner in Coulton *et al.* (1988: 130, 136-7). ¹⁶² e.g. *CJ* 4. 36. 1.

high and low, slave and free; young¹⁶³ and old; and they are employed in a variety of occupations, such as soldiers, doctors, teachers, accountants, archivists, hunters, musicians. And if the system favoured the wealthy and powerful, nevertheless, those normally seen as disadvantaged in the ancient world, such as women and slaves, were more than capable of using the rescript process to further their own causes.

III ORIGIN

From where do the petitioners originate?

The panegyrist Mamertinus, addressing Maximian in April 289, speaks as follows:

tuque potissimum (credo enim hoc idem Diocletianum Oriens rogat) has provincias tuas frequenter inlustres, te profundissima licet pace florentes adventu numinis tui reddas feliciores.

And do you above all (for I believe that the East beseeches Diocletian for the same thing) light up your provinces again and again, since although they flourish under the deepest of peaces, you make them the more fortunate by the arrival of your majesty.¹⁶⁴

Even as Maximian is the focus for Mamertinus and others in Gaul and the west, so is Diocletian for the east. One might expect, therefore, that the majority of recipients of the rescripts issued from Diocletian's chancery came from the east. This is probably correct, but most of the rescripts, just as they are silent on so many other questions, to which we would like an answer, are silent on this matter as well. Nevertheless, I propose to set out what information can be gathered on the provenance of the petitioners.

(a) *Petitions from the East*

The following rescripts contain geographical or other information suggesting eastern origin:

CJ 4. 33. 4. The petitioner was due to be repaid a *nauticum fenus* (for a voyage to Africa) apparently in Salona.¹⁶⁵

¹⁶³ There do not seem to be any petitioners who are themselves minors (since they would lack full legal capacity). But a large number are people trying to remedy what was done while they were minors. Severinus and the Arabian students are given immunity until the age of 25, so are presumably below that age at the time of their petition (*CJ* 10. 50. 1).

¹⁶⁴ *Pan. Lat.* 10(2). 14. 4.
¹⁶⁵ Cargo rates for the journey between Africa and Salona are present in the Prices Edict (*PE* 35. 26).

6. 24. 7. In this rescript, the petitioner is told that fraternal adoption (i.e. adoption of another as one's brother) is not permissible and cannot make the 'adopted' brother into an heir. The discussion of fraternal adoption in the Syro-Roman Law Book might indicate that this case arose in Syria.¹⁶⁶ Others take the recipient to be Jewish or Thracian.¹⁶⁷ This is almost certainly an eastern situation.

7. 14. 4. The petitioner is trying to establish the free birth of a relative enslaved *Palmyrenae factionis dominatione*. This could have occurred anywhere in those eastern provinces under the control of Palmyra in the 260s and 270s.

7. 16. 38. The petitioner is attempting to keep hold of his office as *limenarch*.¹⁶⁸ The Greek-style title and the petitioner's name (Philo-serapis) make it plausible that this is from a Greek-speaking eastern city.

8. 44. 23. This case involves the city of Thessalonica.

8. 46. 6. This rescript rules against *abdication* (*apoceryxis*), which is a Greek practice, although papyri show that it was still effectively recognized in Egypt.¹⁶⁹ It has been suggested that this is a letter to the proconsul of Asia.¹⁷⁰

9. 35. 10. In this case, the petitioner's grandmother has been accused of *infamia* as being or having been a slave of the city of Comana. It is not clear whether Comana in Pontus or in Cappadocia is meant. If the former is the case, the matter appears all the more serious, since Comana Pontica was renowned for its temple prostitutes called *hierodouloi*.¹⁷¹

10. 42. 8. This rescript refers to *protostasiae vel sacerdotii vel decaprotiae munera*. *Protostasia* is a Greek term in origin, though it is only attested in Latin in this transliterated form and no Latin equivalent seems to have developed. It occurs as a title in the *CTh* (11. 23) and evidence seems confined mainly to the east. *Decaprotia* is more clearly Greek in this context, since in the west it seems to be rendered by *decemprimatus*.¹⁷² Thus, this text probably relates to an eastern city.

¹⁶⁶ *Leges Saeculares* 86 (*FIRA*² ii. 780). See Tellegen-Couperus (1982: 66-70); contrast J. Boswell, *The Marriage of Likeness* (London, 1995) 100-7.

¹⁶⁷ Volterra (1933) (Jewish) and Huchthausen (1979: 15) (Thracian). Nallino (1936: 330-1) places the parties near the frontier, so that the petitioner's father made the adoption during a period of time spent outside the empire.

¹⁶⁸ This is one in a list of the Greek-sounding offices mentioned in Charisius' *De Muneribus*, at *D* 50. 4. 18. 10.

¹⁶⁹ See letter catalogue, no. 5.

¹⁷⁰ Strabo 12. 3. 32-6 (cf. 8. 6. 20 on Corinth). Prostitution itself automatically incurred *infamia*.

¹⁷¹ Charisius uses *decaprotiae* (*D* 50. 4. 18. 26), but Hermogenian refers to *decemprimatus* (50. 4. 1. 1). Both their extracts contain not only Greek-style terms in Latin, but terms in the original Greek as well.

10. 50. 1. This rescript is addressed to Severinus and other *scholastici* from Arabia studying at Beirut.

10. 62. 3. This rescript refers to *protostasiae munus*, which, as argued above, may indicate an eastern origin.

(b) *Petitions from the West*

A priori, any rescript for which a western place of issue or posting is accepted (therefore coming from the chancery of Maximian) must be from a western petitioner. The question of the provenance and authorship of these rescripts has already been examined in Chapter 4 Section ii. Two, however, contain positive indications of the petitioner's origin. *FV* 41, posted at Carthage in 298, instructs the petitioner, Tannonia Iulia, to approach the proconsul of Africa. *FV* 292, posted at Milan in 295, instructs the recipient to approach the *corrector*, which places the case in Italy or Sicily.

Only one rescript is unambiguous in showing a western petitioner at the court of Diocletian. This is *CHV* 2. 1, issued from Sirmium, which directs the recipient to approach the proconsul of Africa.¹⁷³ A second probable instance is *CJ* 5. 62. 23, also issued at Sirmium. This tells the petitioner that he can approach the praetor (presumably in Rome).¹⁷⁴

Other indications of western origins are as follows:

CJ 1. 18. 4. The petitioner is told to approach the *corrector*. This must, therefore, be placed in Italy or Sicily.

4. 2. 9. In this case, a loan made in Gaul was due for repayment in Rome.¹⁷⁵

4. 33. 3. Here, a loan was due for repayment *in sacra urbe*, i.e. in Rome.¹⁷⁶

¹⁷³ *Collectio* 244–5 is similar, as issuing from Sirmium and advising an approach to a proconsul. Which proconsul, however, is not specified. This text could relate to Africa or Asia. Achaea does not seem to have had a proconsul as early as the date of this rescript, 294 (Barnes, *NE* 160). Diocletian also wrote to the proconsul of Africa from Alexandria in 302 (*Coll.* 15. 3) and poss. to the vicar of Africa from Durostorum in 303 (*CJ* 5. 73. 4).

¹⁷⁴ The continued jurisdiction of the praetor at Rome is implied by Hermogenian at *D* 1. 18. 10.

¹⁷⁵ Freight rates between Rome and Gaul are given in the Prices Edict (*PE* 35. 36).

¹⁷⁶ Mommsen imaginatively restored a description of the fire in *FV* 23 (= *CJ* 4. 48. 5) as *qui nunc per pomerium sacrae urbis grassatus est* . . . (dated Nov. 285; a possible reference to the fire of 283 under Carinus), a restoration he later rejected (*Collectio* 24). *CJ* 8. 47. 6 refers to *regia urbe*, which has been thought to be a Justinianic interpolation referring to Constantinople (see Amelotti 1960 127), but J. A. C. Thomas (1967: 417) would put Rome back into the text.

5. 51. 9. The petitioner is told he can go before the praetor, presumably in Rome.

It is possible that the use of the term *competens iudex* in rescripts may conceal Justinianic emendations for *praetor*, but it is difficult to see how such cases could be identified. Note, however, that *CJ* 4. 2. 9 above, which refers to Rome, also speaks of *competens iudex*, which might therefore be an instance of this type of emendation.¹⁷⁷ Two further texts mention the praetor. One occurs in a general statement about *adrogatio* and is not specific to Rome.¹⁷⁸ The other is more ambiguous. It compares the recipient's state of having a *curator*, to having one appointed by the praetor.¹⁷⁹ It is not clear whether it is implied that the petitioner (being from Rome) could indeed have had a *curator* appointed by the praetor, or whether it is a theoretical comparison, with no bearing on the geographical origin of the case.

Since most of Constantine's few private rescripts date from the earlier part of his reign, they can be assumed to be of western origin. Two, however, instruct the petitioner to approach the urban prefect, and so are specific to Rome.¹⁸⁰

A group of rescripts refer to property as *stipendiarius* or *tributarius*. According to Gaius, the former referred to land in senatorial provinces, the latter to land in imperial provinces.¹⁸¹ Thus, if the interpretation of Gaius was still current in the late third century, one rescript that discusses *stipendiaria* should pertain to one of the few remaining senatorial provinces at that date (286); namely, Africa, Asia, Achaëa, and Crete and Cyrene.¹⁸² The *tributaria* texts, however, could come from almost anywhere else in the empire.¹⁸³ There is, however, considerable doubt that the definitions of Gaius on this point are correct, and other evidence seems to suggest that the terms *stipendiarius* or *tributarius* are interchangeable.¹⁸⁴ Thus their use indicates no more than that the property in question is not in Italy.

One freedman, Philadelphus, is told of the relevance of a *lex* to his case, a *lex* extended to the provinces in AD 129.¹⁸⁵ Presumably,

¹⁷⁷ The reference to *iudex competens* at *FV* 33 (posted at Rome, 315) might also be to the praetor, but could well be genuine (cf. *FV* 32), since *FV* texts appear to have undergone less alteration than those in *CJ*.
¹⁷⁸ *CJ* 2. 21. 3. ¹⁷⁹ *FV* 273, 274. ¹⁸⁰ *Inst.* 2. 21.

¹⁸¹ *Inst.* 2. 21.
¹⁸² *FV* 283. The parallel *CJ* text, 8. 54. 2, drops the term *stipendiaria*, as no doubt anachronistic in the 6th cent. For senatorial provinces at this time, see Barnes, *NE* 157, 160, 168-9.
¹⁸³ *FV* 289, 293, 315, 316.

¹⁸⁴ See Grelle (1963: 16-21). ¹⁸⁵ *CJ* 7. 9. 3.

therefore, he is not in Italy, but perhaps from elsewhere in the west, since the subscript gives Ravenna as the place of issue (thus a rescript of Maximian).¹⁸⁶

It is also possible that all those rescripts that refer to *praeses* or *rector provinciae* should relate to non-proconsular or non-Italian provinces, although it is not impossible that even senatorial governors could be called by these titles.¹⁸⁷ Provincial origin should also be assumed for those few texts referring to local law.¹⁸⁸

This exhausts positive indications of origin for private rescripts. Some further generalizations can be made.

(c) *Nomenclature*

First, it must be stated that names are likely to be of limited assistance. Broadly speaking, nomenclature is either Greek or Latin, though the use of single names for addressees may hide a fuller nomenclature that would have elements of both (or other alien styles). Huchthausen comments about Greek names among female recipients of Diocletianic rescripts: 'Daß die Trägerin eines griechischen Namens Griechin oder Orientalin gewesen sein mußte, ist in dieser Periode natürlich keineswegs gesagt, wir finden solche Namen bis hinauf nach Britannien.'¹⁸⁹ Rome itself has been described as the largest Greek city in the empire.¹⁹⁰ Our rescripts to westerners listed above include names such as Syn-trophus and Neophytus.¹⁹¹ Conversely, Latin names were diffused in the east.¹⁹² Even a clear Greek or Roman name is, therefore, of little use.

As already observed, Aurelius/Aurelia is the most common name among the recipients.¹⁹³ During the reign of Diocletian and up to the fall of Licinius, the name Valerius (deriving from the imperial nomenclature) became frequent in Egypt at least among provincial and civic officials and the military. There are very few Valerii in our rescript

¹⁸⁶ For another law (*lex Iulia de bonis cedendis*) extended to the provinces, which must place the case outside Italy, see *CJ* 7. 71. 4.

¹⁸⁷ Note Barnes (*NE* 160) for confusion over title and status in Achaëa. One governor is called *praeses et corrector*. *Corrector* itself might be mistakenly shortened in transmission as *rector* (as in some MSS for *CJ* 1. 18. 4; Krüger, 74 n. 13).

¹⁸⁸ *CJ* 4. 65. 19 (*consuetudo regionis*), 6. 23. 9 (*patriae tuae ius*).

¹⁸⁹ Huchthausen (1976: 56; cf. 1974a: 206).

¹⁹⁰ MacMullen (1982: 487 n. 12); but he calls the idea 'quite unprovable'.

¹⁹¹ *CJ* 4. 2. 9, 5. 62. 23. ¹⁹² Amelotti (1960: 12).

¹⁹³ Listed in Rotondi (1922: 270-1). There are sixteen Aureliae and eighty Aurelii.

population,¹⁹⁴ probably reflecting the private status of most of the petitioners.¹⁹⁵

A small number of names appear to be barbarian,¹⁹⁶ oriental,¹⁹⁷ or Thracian.¹⁹⁸ Huchthausen estimates possible non-Greco-Roman names at 8.9 per cent of all recipients.¹⁹⁹ This total, however, includes a large number of *verdächtig* names.²⁰⁰ Even some of the less controversial names include historical and literary styles, such as Sarpedon and Cyrus, that are an uncertain indication. One recipient is almost certainly Jewish (Iudas), receiving a reply on a point possibly arising out of Jewish judicial procedure.⁽²⁰¹⁾ It also seems plausible to find one rescript, which was probably posted at Sirmium, being addressed to one Pannonius.²⁰² Beyond this, it is hard to go.

(d) Proximity to the Emperor

The presence of the emperor must have drawn many people to exploit that fact by presenting a petition. One decurion tries to gain civic exemption for having been on an embassy to the emperor. The reply is as follows:

Transmarina legatione apud nos perfunctos constitutum est biennii vacationem munerum civilium et honorum habere, non eos, qui de proximo obsequium rei publicae videntur exhibuisse.

It is established that those who have served on an overseas embassy to ourselves have a two-year exemption from civic duties and offices, but not those who are shown to have paid the respects of their city from nearby.²⁰³

¹⁹⁴ Valeria: *CJ* 3. 34. 12, 4. 38. 3; Valerius: 6. 2. 10, 7. 32. 6, 7. 43. 11, 7. 62. 5, 10. 44. 2, and Valerius *miles* 12. 33. 2.

¹⁹⁵ See Keenan (1973: 44-6) for the occurrence of the name Valerius among officials at this time. Valerius was replaced by Flavius (deriving from Constantine) from 324. Aurelius continued very common right up to the 7th cent., but among civilians rather than officials (Keenan 1973: 51-6; also 1974).

¹⁹⁶ Huchthausen (1979: 10 n. 9) (three names). ¹⁹⁷ *Ibid.* 9 n. 8 (thirteen names).

¹⁹⁸ *Ibid.* 17-18 (nineteen names), plus a poss. sixteen further names (pp. 19-20).

¹⁹⁹ *Ibid.* 13. As with her calculations for women, her figure for total rescripts is rather low, so the true percentage is somewhat less.

²⁰⁰ *Ibid.* 12 n. 13 (forty-three names). ⁽²⁰¹⁾ *CJ* 3. 13. 3 (see Linder 1987: 114-17).

²⁰² *CJ* 4. 37. 2. Though certainly of Hermogenian date (293-4) and likely to have been posted in the Danube area, the date and place are missing. However, the subscript given for 4. 35. 19 should probably be assigned to this rescript instead, which would date it to Oct. 293 at Sirmium (see Krüger ad loc.).

²⁰³ *CJ* 10. 65. 3. Since this text can only be dated as being before the creation of the Caesars in 293, we cannot say where Diocletian was at the time, nor speculate from where the petitioner Mucianus might have come.

Clearly a distant visit to the emperor was considered onerous,²⁰⁴ and even a journey to court on private business would not have been inexpensive. The decurion mentioned above, who visited the court *de proximo*, presumably presented his petition also *de proximo*. It would be odd for him to expend more effort and travel further to make the petition than on his original embassy. Many petitioners therefore may have come no great distance.

Some petitioners are very close to the emperor indeed. It is precisely because he is with the imperial *comitatus* that Aurelius the *archiater* cannot attend to his affairs and a hearing is arranged for him before the praetorian prefect.²⁰⁵ Diocletian also tells Diophanes:

Si contra te iure pronuntiatum est nec appellationis imploratum auxilium, intellegis adquiescere te statutis oportere. In sacro enim comitatu nostro timere nihil potuisti.

If a legal ruling has gone against you and you have not invoked the assistance of an appeal, you realize that you should abide by what was laid down. For you can have had nothing to fear in our sacred *comitatus*.²⁰⁶

The petitioner cannot use fear as the reason for his not appealing, since the imperial court is free from intimidation. The implication of this is that he is not just at court for his petition, but was already there, trying to lodge an appeal, which he presumably claims to have failed to do, as a result of intimidation. Perhaps he is even a member of the *comitatus*.

All petitioners concerned with people or animals being carried off by the enemy should come from frontier zones. Of sixteen rescripts of Diocletian under the appropriate *CJ* title on *postliminium* (*CJ* 8. 50), nine seem to have been posted while the emperor was near the frontier.²⁰⁷ These are likely to reflect local matters taken to the emperor while he was in the relevant area. The correlation, however, is not high, especially since Diocletian spent so much time near the frontiers in any case.

A petitioner's journey need not have started from the place appar-

²⁰⁴ The *munus* of an embassy was considered personal, because the ambassador sometimes received expenses (Arcadius Charisius, *D* 50. 4. 18. 12), but the implication of the passage is that expenses were not always paid. Note that the prospect of a legation to the emperor even appears in people's horoscopes (Firmicus Maternus, *Math.* 8. 26. 13).

²⁰⁵ *CJ* 7. 35. 2.

²⁰⁶ *CJ* 7. 67. 1.

²⁰⁷ *CJ* 8. 50. 3–5 (Aug. 287, May/June 290) were probably issued near the Syrian frontier. *CJ* 8. 50. 11–16 (Dec. 293–Sept. 294) were all issued near the Danube frontier (for Diocletian's movements, see Barnes, *NE* 51–3).

TABLE 2

Ref.	Petitioner	Diocletian
CHV 2. 1	Africa	Sirmium
Collectio, 244-5	Africa/Asia	Sirmium
CJ 1. 18. 4	Italy	Sirmium
4. 2. 9	Rome	Sirmium
4. 33. 3	Rome	Nicomedia?
5. 51. 9	Rome	Sirmium
5. 62. 23	Rome	Sirmium?
4. 33. 4	Salona?	Nicomedia?
7. 14. 4	East	Sirmium
7. 16. 38	East	Nicomedia
8. 44. 23	Thessalonica	Sirmium
9. 35. 10	Comana	Nicomedia

ently indicated from information in the rescript, while some petitions may have been presented not by the petitioner but by an intermediary travelling to the court in any case.²⁰⁸ However, the apparent journeys involved for petitioners, based on their indications of origin and either the place of posting of their rescripts or general inference from the imperial itinerary, are shown in Table 2.

These journeys are not short or easy, especially if made in winter. The three texts for petitioners from Rome given at Sirmium, are all dated in January or December. Theonnestus gives a vivid account of the appalling winter conditions encountered on his journey with the entourage of Licinius from Carnuntum to Milan in February 313.²⁰⁹ It is thus clear that petitioners could and did make long and difficult journeys to the court.²¹⁰

²⁰⁸ It is, of course, impossible to estimate the number of petitions not presented in person. For instance, would women be more likely to act at a distance, even through servants? However, there is nothing in theory to prevent women personally approaching the emperor (cf. the anecdote at Dio 69. 6. 3).

²⁰⁹ *Hippiatrica Berolinensia* 34. 12 (*Corpus Hippiatricorum Graecorum*, i. ed. E. Oder and K. Hoppe; Leipzig, 1924); cf. Lactantius on Maximinus' contemporaneous journey across Asia Minor (*DMP* 45. 3) as well as on Diocletian's departure from Rome for Ravenna and beyond in Dec. 303 (*DMP* 17. 3); also Mamertinus on Maximian's suspiciously easy journey from Gaul to Milan in Dec. 290 (*Pan. Lat.* 11(3). 2. 4).

²¹⁰ However, for someone avoiding a journey to court on the grounds of old age, see Optatus, *App.* II (ed. Ziwsa, p. 199).

Further, if the court was on the move, the difficulties increased with the need, first to locate it to present the petition, and then to follow it while awaiting a reply. Constantine holds in high regard the *palatini*: *nec alieni sunt a pulvere et labore castrorum, qui signa nostra comitantur* ('Those who follow our standards are no strangers to the dust and toil of the camp').²¹¹ The petitioners too may have had to endure a good deal of additional discomfort to obtain their desired rescripts.

²¹¹ *CTh* 6. 36. 1. 1.

Imperial Letters

I INTRODUCTION

The main purpose of this and the next chapter is to provide a survey of imperial letters and edicts in the form of chronological catalogues, with appropriate brief comments on notable features of the texts listed. In view of the relatively small number of surviving edicts, Chapter 7 gives a complete catalogue of them for the entire period under discussion (284–324). In this current chapter, letters for the period 284–313 are listed, with a more summary catalogue for 314–24 in Appendix D.

The catalogue style of presentation not only assembles in one place information gathered from diverse sources, but in so doing tackles the inherent difficulty of identifying whether documents are indeed letters (especially for texts in the Justinian Code). For Constantine's letters, the need is less pressing. A good (if now slightly outdated) chronological account already exists in Seeck's *Regesten*,¹ and a recent palingenesis of Constantinian documents from literary sources is already available.² Further, the mass of texts from the Theodosian Code are readily identifiable as *epistulae*. The catalogue in this chapter, therefore, only goes up to the end of 313, which gives a good idea of the range of material for Constantine. The considerable number of letters for the period 314–24 is listed in summary form in Appendix D, although this also includes comments on selected matters of dating and recipient.

One of the major concerns in analysing this material is the identification of letters that are certain or probable rescripts sent in reply to consultations from governors. These constitute an important body of evidence for the assessment of the functioning of government at this time. The final section of this chapter, therefore, attempts to gauge the level of rescripts present in the material.

¹ Seeck's earlier 'Die Zeitfolge der Gesetze Constantins' has been reprinted recently by the Accademia Romanistica Costantiniana as part of its preparation for a palingenesis of all late imperial legislation (for details see bibliography under Seeck 1889).

² Silli (1987; also earlier listing in Silli 1983); both these were issued under the auspices of the Accademia Romanistica Costantiniana.

II THE REIGN OF DIOCLETIAN

Private rescripts form the bulk of Diocletian's surviving constitutions. Imperial letters, however, continue to play an important part in imperial pronouncements, although letters to cities, so important in earlier periods, are barely represented.

Most of the material derives from the *Codex Iustinianus*, although there are some interesting examples from other sources. Only one authentic text is preserved in Greek and that may be a translation from Latin.

The catalogue is divided into two sections. Section *a* gives the catalogue of letters for 284–305 in chronological order, with brief comments on each text (nos. 1–45), followed by section *b*, giving a list of items rejected as letters on various grounds (nos. D1–13).

The criteria for identification within the code are as follows:

1. Texts where the recipient's office is specified.
2. Texts with a greeting, either in the inscription or text.
3. Texts where the content can only have been addressed to an office-holder.
4. Texts where the use of *ad* with the recipient's name implies a letter, in the absence of evidence to the contrary. Letters can freely use *ad* or the dative,³ but private rescripts only use the dative. For the only exception see D2 below.
5. Texts where the subject matter seems most appropriate to an office-holder, though not conclusively so. This is, of course, an uncertain criterion.

In view of the fact that these texts were assembled at court not long after they were issued, it seems unlikely that the date of posting of letters (which should have been at their destination) would have been known to the compilers. However, since some undoubted letters do carry the posting date (e.g. nos. 17 and 31), it is not a firm criterion upon which to doubt a text's status as a letter. Of course, the subscript might be corrupt anyway.

Since some texts appear not to differ from private rescripts in content or style⁴ and are only identified as letters by the recipient's office,

³ On *ad* in the inscriptions to *CTh* texts, see Sirks (1993: 52–3, 66–7).

⁴ Honoré's assignment of a text to one of his *a libellis* is not considered either sufficient or necessary in the decision as to its true category. However, he is cited as supporting evidence where appropriate.

it seems likely that a number of letters will have escaped detection. However, since presumptive private rescripts vastly outnumber identified letters, the undetected letters cannot be very numerous.⁵ Even the acceptance as genuine of all the doubtful and uncertain letters would not greatly increase the numbers involved.

(a) *Catalogue 284-305**

Unless otherwise indicated, all letters up to 292 bear the heading *Impp. Diocletianus et Maximianus AA.*, and from 293 onwards, *Impp. Diocletianus et Maximianus AA. et CC.*

1. *CJ* I. 51. 1. *Paulino*. Given 14 July 286 at Tiberias?⁶

Paulinus is suggested as a possible governor by *PLRE* i: 676 (Paulinus 3). The subject-matter is the forced appointment of judicial assessors and this may well be a letter taking the governor to task for being too heavy-handed.⁷

2. *Coll.* 6. 5-6. *Fl. Flaviano*. Posted 10 June 287 or 15 March 291.

This text is problematical on account of its dual dating and ascription to both the Gregorian and Hermogenian codes (Chapter 2). The wording, which deals with incest, seems more appropriate to a third party (i.e. the governor) than to the person directly involved. It is probable that the recipient should be identified with the Flavius Flavianus who governed Numidia c.286, though not necessarily while he held that office.⁸

⁵ See the comments of Honoré, *EL*² 140-1. For recent attempts to identify letters in the pre-Diocletianic material from *CJ*, see Peachin (1990 (*CJ* 5. 62. 10, 7. 45. 5, 9. 6. 6, 9. 9. 14) and 1992 (*CJ* 4. 28. 3)). On the question of possible praetorian prefects denoted by the abbreviation *pp* after certain recipients' names in some MSS of *CJ* (most of which are omitted by Krüger), see Howe (1942: 119-20).

⁶ For Diocletian at Tiberias (poss. 31.5-31.8.286), see Barnes, *NE* 50-1 nn. 25-6. For a summary account of Diocletian in Palestine, using Rabbinic sources, see Smallwood (1976: 536-8).

⁷ Honoré assigns this text to his *a libellis* no. 19 in 291 (Charisius), following Haloander in taking the subscript *tyberio et maximo* as a corruption of *Tiberiano et Dione*, the consular date for 291 (*EL*² 151 n. 83; 156 n. 152; 157 n. 175; 162). However, the contradiction between style and date, which this emendation is intended to avoid, ceases to be problematical if the text is a letter and not a private rescript, although Honoré only otherwise assigns later letters in 292 and 293 to Charisius (*EL*² 162), and promotion from *libelli* to *epistulae* seems more likely. Further, Charisius may have been *magister libellorum* in the west in 286.

⁸ The question is left open by Kolbe (1962: 34), but Liebs (1987: 38) is more positive. Honoré (*EL*² 158 n. 197, but only citing a *hapax legomenon*) assigns this text to Charisius as *magister libellorum* in 291, although without commenting on the problem of the dual dating. However, as in the previous note, this could be Charisius as *magister epistularum* in 287.

3. *CJ* 9. 9. 19. *ad Pompeianum*.⁹ Given 5 December 287.

This is a true rescript on a particular case. The text says *ex litteris tuis cognovimus*. The issue is a matter of procedure in an adultery trial. All three members of the adultery triangle are mentioned by name. Two later more dubious texts have also been assigned to Pompeianus (no. D8).

4. *CJ* 9. 20. 7. *Maximo pu*. Given 8 December 287.

This *epistula* is also a true rescript answering a letter from the urban prefect.¹⁰ There are four verbs in the second person singular. The problem is one of abductions from the city for which the emperors decree a severer (capital) penalty.

5. *CJ* 8. 46. 6. *Hermogeni*. Posted 15 November 288.¹¹

This constitution states that *abdicatiolapoceryxis* is not compatible with Roman law. The general nature of the statement does not prove this to be a letter, but the recipient has been identified with Aurelius Hermogenes, proconsul of Asia in the late 280s.¹²

6. *CJ* 7. 56. 3 and 9. 2. 9. *Honorato*. Posted 19 August 289.

This procedural text mentions *iudex* in the third person. This does not, however, preclude the recipient from being an office-holder. He may be identical with the addressee of no. 7 and also the Paetus Honoratus who was *corrector* in Italy c.284/90.¹³ *PLRE* i. 438 is wrong to suggest him as governor of Pannonia Inferior (see D6).

7. *CJ* 2. 10. 1. *ad Honoratum*. Subscribed 14 February 290.

This text gives advice on the duties of a judge. This point and the use of *ad* in the address make it likely that this is an *epistula*. The recipient may be the same as no. 6 above.

8. *CJ* 9. 41. 9. *ad Charisium praesidem Syriae*. Given 10 May 290, at Emesa.

This *epistula* concerns investigations into questions of free birth, a matter to which the emperors attach great importance. The aim is to

⁹ This Pompeianus may be the prefect of Egypt of 287–90. Evidence relating to his tenure is given in Barnes, *NE* 149.

¹⁰ M. Junius Maximus was consul *ordinarius* II in 286 and urban prefect from 286 to 288 (*PLRE* i. 587, Maximus 38).

¹¹ On account of the absence of other rescripts for this year, Mommsen (1860: 424) and Krüger (*CJ* 357 n. 17) place this text in 287. This is followed by Honoré (*EL*² 149 n. 54), who assigns this text as a private rescript to his secretary no. 17/18 (Gregorius).

¹² For his proconsulate, see Barnes, *NE* 116, 157. For his identification as the recipient, see Wurm (1972: 80).

¹³ Thus Barnes, *NE* 144.

prevent false asseverations. We cannot be certain that it is a rescript. The recipient is presumably the same as in no. 20. The governor of Syria at this time may still have been a senator.¹⁴ If so, this is an additional argument against identification of the recipient with the jurist Aurelius Arcadius Charisius, who, as *magister libellorum*, would have been equestrian.¹⁵

9. *CJ* 7. 35. 3. *Numidio correctori Italiae*. Given 10 September 290.

Without the recipient's title, we would be unable to deduce that this was an *epistula* from its content alone. The subject is *praescriptio longi temporis*.

10. *Coll.* 1. 10 (= *CJ* 9. 16. 4). *exemplum s(acrarum) l(itterarum) dd nn. Have Agatho k(arissime) n(obis)*.¹⁶ Given 30 November 290, at Sirmium.

I have quoted the *Collatio* heading which gives the full greeting. *CJ* calls it *exemplum sacrarum litterarum*, but only gives the recipient in the dative. *CJ* also omits the revealing first statement in *Coll.* which says: *Qualitas precum Iuli Antonini clementiam nostram facile commovit*. Even though we might have guessed it, this shows that this is an undoubted rescript, referring to a specific case, with the governor forwarding the accused's petition. The case, indeed, generates more than one imperial document. There is the *epistula* to the governor and also an *adnotatio*, a separate memorandum granting a specific favour or exception.¹⁷ If we were to project back the functions described in the *Notitia Dignitatum*, we might suppose that this one case required one document from the *magister epistularum* and one from the *magister memoriae*.¹⁸

II. *CJ* 7. 35. 4. *Crispino*. Posted 27 February 292.

There are no surviving private rescripts from the year 292, but there

¹⁴ The evidence is unclear. See the list in Barnes, *NE* 153–4. The only certain senator is Aelius Helvius Dionysius, for whose career see *ibid.* 115.

¹⁵ The identification with the jurist is made by Dell'Oro (1962: 340–3) and Balestri Fumagalli (1980: 226). For comprehensive arguments against the identification, see the lengthy discussion by Pólay (1986: 196–212) (although he dates the jurist to the reign of Constantine), Liebs (1987: 28–30) (suggesting he might be the jurist's son), and Honoré (1994: 164, 170). See Ch. 4 Sect. iv no. 3.

¹⁶ The letters *dd nn*, for *dominorum nostrorum*, can be taken as indicating that this constitution was added to the Gregorian Code before 293 (with Diocletian and Maximian as joint Augusti without any Caesars) or at least before their abdication in 305.

¹⁷ See Millar (1977: 265–6) and Turpin (1988). *Adnotationes* are discussed in Ch. 3 Sect. v.

¹⁸ *Notitia Dignitatum*, Or. 19. 6–9 and Oc. 17. 11–12.

are four *epistulae*.¹⁹ Crispinus receives three. This one cannot be considered an *epistula* by content (though the use of *decernimus* is suggestive), but only by association of the recipient with nos. 12–13; the coincidence of name and dates is too close to be denied. The text prevents the *praescriptio longi temporis* from being used against those absent on public business.

Honoré (*EL*² 155 n. 144) suggests Gregorius as possible author of this text.

12. *CJ* 1. 23. 3. *Crispino praesidi provinciae Phoenice*. Given 31 March 292.

This *epistula* cannot be proved to be a rescript, though I think its ruling on the necessity for producing authentic rescripts in court is likely to have arisen from a specific case, rather than being intended to introduce procedural change. See Chapter 3 Section iv.

13. *CJ* 9. 2. 11. *Have Crispine carissime nobis*. Given 6 April 292.

This is not only an *epistula* but a rescript as well. This can be shown from the phrase *descendere eum coges atque id exsequi iudicio tuo*. It thus clearly concerns a specific case.

Honoré (*EL*² 162 n. 312) assigns this text to Arcadius Charisius as *magister libellorum*.

14. *CJ* 10. 10. 1. *Scyrioni rationali*. Given 12 April 292.

The *rationalis* (*summae*?) is addressed as *gravitas tua*. He is given a ruling that *bona caduca* are forfeit to the fisc and cannot be claimed by the deceased's city. This clarification may well have originated from a case or series of cases where cities invoked such rights against the claims of the fisc.²⁰ For another letter to a *rationalis*, see no. 65. On the *largitiones/summa res* and *privata* and their officials, see King (1980b), Millar (1980), Delmaire (1989a, 1989b), Hendy (1985: 371–86).

Honoré (*EL*² 162 n. 312) assigns this text to Arcadius Charisius as *magister libellorum*.

15. *CJ* 10. 62. 3. *Crispino*. 284/292.

The recipient is addressed in the second person and is clearly an office-holder. The text rules that children *in potestate* cannot be summoned to perform *munera* at the same time as their father. It may well

¹⁹ It is not clear whether these were originally some of the latest items in the Gregorian code or earliest items in the Hermogenian code (see Ch. 2).

²⁰ See Tellegen-Couperus (1986: 85, 94–5). It was Caracalla who took for the fisc the sole right to *caduca* (*Tiuli Ulpiani* 17. 2; see *FIRA*² ii. 279 = *IA* i. 464).

have arisen from a particular case. As already seen in Chapter 5 Section iic, people were very ready to take action to challenge their liability to *munera*. Although only dated by the names of Diocletian and Maximian without the Caesars, this text may well be addressed to the Crispinus in nos. 11–13.

16. *CJ* 9. 2. 8. *Exemplum sacrarum litterarum. PP sine die et consule. 284/292.*

This text is without date or recipient. It is presumably an *epistula*. It states that those wishing to make an accusation should not go to the *stationarii* but to the governor, either presenting a petition (*libellos offerens*) or having their complaint put on record (*querellas suas apud acta deponens*). Abuses by the *stationarii* are mentioned in edict catalogue, no. 37.

17. *CJ* 9. 41. 8. *ad Sallustianum praesidem. PP sine die et consule. 284/292.*

This *epistula* concerns the use of torture, seeking that only those liable to torture are subjected to it and then only after other evidence has been exhausted. Exemption is for soldiers, veterans, and their children.²¹ The extract ends with a fine statement of imperial benefaction: *Hac enim ratione etiam universi provinciales nostri fructum ingentiae nobis benevolentiae consequentur* 'For on this reasoning, all our provincials will enjoy the fruit of our innate benevolence'.

18. *CJ* 10. 1. 5. *Exemplum sacrarum litterarum ad Flaccum. 284/292.*

This letter concerns the ever-present problem of rapaciousness by the *Caesariani*. The recipient might be a financial official, perhaps the *rationalis summae*.²²

19. *CJ* 10. 32. 2. *exemplum sacrarum litterarum. sine die et consule. 284/292.*

This constitution concerns decurions and nominations to *munera*. Not only does it lack a recipient, but its content is such that it is impossible to tell whether it is a rescript. It could also be an edict, or even a private rescript.²³

20. *CJ* 11. 55. 1. *exemplum sacrarum litterarum ad Charisium. sine die et consule. 284/292.*

²¹ Cf. *CJ* 9. 41. 11 (for equestrians and decurions).

²² This is suggested by *PLRE* i. 342.

²³ For private rescripts described as *sacrae litterae*, see Mourgues (1987: 79–82).

This letter states that the rural population is not liable to anything beyond the capitation tax and the *annona*. The extract ends: . . . *neque a rationali nostro mularum fiscalium vel equorum ministerium subire cogatur* (. . . nor should they (*rusticana plebs*) be compelled by our *rationalis* to undertake the provision of mules or horses for the fisc'). We may, therefore, presume that the matter has arisen from this specific abuse. Although this could have originated from a court case, it seems likely to have come directly from a petition or complaint to the governor. See also Millar (1993: 196–7). The recipient is most likely the same as in no. 8 above.

Honoré (*EL*² 162 n. 312) proposes Charisius the jurist as author (to his own son!?).

21. *CJ* 9. 9. 25. *Crispino*. Given 28 August 293.

This letter gives instructions to the governor on the conduct of a specific adultery trial. The recipient is usually identified with the Crispinus of nos. 11–13 and 15.

22. *CJ* 2. 13. 1. *Aristobulo salutem*. Given 10 September 293.

The recipient is most likely the former praetorian prefect while proconsul of Africa.²⁴ It represents an attempt to stem abuse of the legal system by the powerful. The letter seems to me to be an answer to an enquiry from the governor regarding some specific case, which causes difficulty because of the high status of those involved. A senatorial governor had difficulty dealing with fellow *clarissimi*.²⁵ The emperors reply by citing existing law, specifically a ruling of Claudius Gothicus. The recipient is addressed in the second person, but third-person references to *rectores* also appear.

Honoré (*EL*² 162) proposes Arcadius Charisius as the author of this letter, while *magister epistularum* to Maximian, but I see no reason why he should not have written it while still *magister* to Diocletian, who is elsewhere found corresponding directly with Africa.

23. *CJ* 2. 51. 2. *Quintiliano*. Given 24 November 293.

PLRE i. 759 makes this man a possible governor. It is assigned by Honoré to Arcadius Charisius as *magister libellorum* in 290.²⁶ However, the use of the verb *decernimus* here by the emperors would be

²⁴ For a summary of his career, see Barnes, *NE* 97. He served in Africa, 290–4.

²⁵ See Ch. 9 Sect. i; cf. Schlumberger (1989) on *potentiores*.

²⁶ *EL*¹ 158 n. 209. Krüger (ad loc.) gives the date as 'a. 290 vel 293', presumably because, although the inscription clearly gives AA et CC (suitable for 293), the subscript says *ipsis AA cons.*, instead of the plain Hermogenian AA *cons.*

unusual in private rescripts, which are usually statements of law not decrees or decisions, and suggests that this is indeed a letter. If necessary, it could be assigned to Charisius as *magister epistularum*.²⁷

24. *CJ* 7. 33. 6. *pars epistulae ad Primosum praesidem Syriae*.²⁸ April/December 293.

This is the only Diocletianic heading to use the word *epistula*. The content (on *praescriptio longi temporis*) would not otherwise suggest an *epistula*.

25. *CJ* 9. 1. 13. *ad Asclepium*. Given 23 January 294.

This appears to be a letter directing the governor as to which sentence to impose.

26. *CJ* 3. 22. 5. *Diogeni praesidi insularum*. Given 2 August 294.

This letter reaffirms a demarcation of jurisdiction between the governor on the one hand and the *rationalis* and *magister privatae* on the other, with respect to free, freed, and servile status, when disputed between individuals and the fisc.

27. *CJ* 5. 12. 21. *ad Geminum*. Given 5 August 294, at Cologne?²⁹

If the place of issue (*Agrippinensis*) is correctly identified, this must be a constitution of Constantius. Except for the use of *ad* in the heading, which is not in itself conclusive, this cannot otherwise be shown to be a letter. The subject is dowries. Honoré assigns it as a possible letter to Hermogenian as eastern *magister libellorum*, but suggests that, since it addresses a difficult problem of private law, Constantius was moved to consult Hermogenian on the matter.³⁰

28. *CJ* 2. 12. 20. *ad Verinum praesidem Syriae*. Given 22 September 294, at Damascus?

This is another short constitution (on the subject of procurators), the main interest of which lies in the identity of Verinus, who may belong rather to 305 (see nos. 48–9).³¹ The place of issue is a suggestion to improve on the otherwise unidentified manuscript reading 'Demesso' and would necessitate the identification of the imperial issuer as Galerius (or Maximinus in 305).³²

²⁷ See Ch. 4 Sect. iii.

²⁸ Primosus is sometimes identified with the senator Latinius Primosus, known from *CIL* 6. 37118.

²⁹ Suggested by Barnes (*NE* 60). See Ch. 11 Sect. iiib, c.

³⁰ *EL*² 139 n. 2.

³¹ *PLRE* i. 910 gives Verinus as recipient of all three texts in 305.

³² Damascus is suggested by Corcoran (1993: 118 n. 124); cf. Ch. 11 Sect. iiib. Galerius appears to have passed through Caesarea in Dec. 293 on his way to suppress a

29. *CJ* 7. 62. 9. *Have Heraclida carissime nobis*. 293/4.

This is a short extract otherwise indistinguishable from the brief private rescripts, but the greeting shows it to be a letter. The subject is appeals.

30. *CJ* 7. 64. 9. *Rufino*. 293/4?

This text deals with veteran privileges. The use of the verbs *concessimus* and *remisimus* are not typical of private rescripts, and it seems reasonable to categorize this as a letter after the fashion of the Brigetio Tablet (letter no. 53).³³

31. *CJ* 9. 9. 27. *Concordio praesidi Numidiae*. Posted 1 June 295.

This constitution opens with a fine statement of imperial intention: *Ita nobis pudor cordi est, ut removeamus prisci iuris ambages et constituamus...*³⁴ This passage seems to imply that this is a general regulation, but it is still possible to see it as a precedent arising from a specific case and, therefore, a rescript. There is no way of telling whether this letter originates from Diocletian or Maximian. Concordius later served as *dux* at Trier under Constantius I as Caesar.³⁵

32. *Pan. Lat.* 9(4). 14. Concludes: *Vale, Eumeni carissime nobis*. c.297/8.

This is the text of a letter from Constantius appointing Eumenius as professor of rhetoric at Autun and at the same time relieving him of his post as *magister memoriae*. Few officials are attested at the courts of the Caesars and it appears that Constantius had to refer to Maximian over this palatine post.³⁶ Thus, either Eumenius held office directly under Maximian and not Constantius, or else Maximian had an overall say on appointments at the Caesar's court.³⁷ However, this letter (which must have been in the names of all the tetrarchs) must have been written by some official of the Caesar's court, perhaps a *magister epistularum*. Note the contrast between the imperial plurals, which

revolt in Egypt (Rea *et al.* 1985: 111-12). The chronology of this revolt is rather vague (Barnes, *NE* 62), and this text could therefore show him as having already returned to Syria by Sept. 294. Other years with the Caesars as consuls are also possible, i.e. 300 or 302 (Diocletian at Damascus?). Honoré (*EL*² 175 n. 487) opts for 302.

³³ Listed as a letter by Honoré, *EL*² 140 n. 5.

³⁴ Honoré sees the attitude behind this text as markedly different from that of the other *magistri* of the reign (*EL*² 184).

³⁵ On his career, see Kolbe (1962: 43-6).

³⁶ *Pan. Lat.* 9(4). 6. 2.: *hoc ipsi palatio parentis sui munus invexerit*.

³⁷ See Rodgers (1989: 257-8).

recur throughout the letter, and the specific reference to Constantius and *meum comitatum*, where imperial collegiality is suspended.

33. Letters to Elephantine and Syene (in Greek). 298 and/or 302. Newly reconstructed text in Brennan (1989: 194–6) = *SEG* 39. 1698.

This is a disputed piece of evidence relating to Diocletian's visits to Egypt. It is not even clear whether the inscription (which is now lost) records one or two documents. The circumstances are typical enough: the inhabitants of Elephantine and Syene petition the emperor for protection against abuses by the military and he responds by confirming his previous grants to them and writing to officials to correct the abuses.

One part of the inscription gives the heading *τῶν γραμμάτων ἐρμηνεῖα* ('the translation of the letters'), followed by the extensive imperial titles of the tetrarchs and then a greeting, *ἄλγουσιν* to the people of Elephantine and Syene in the Thebaid *χαίρειν*. The word *ἄλγουσιν* is clearly not edictal but results from translation of *salutem dicunt* as *ἄλγουσιν χαίρειν*.³⁸

Note also that the emperor has been petitioned more than once. A positive imperial response to a petition is only a partial success for the petitioner. Enforcement is the essential sequel.³⁹ The emperor says that he has written to the governor and to another undesigned official (the *rationalis*?). These are the persons crucial in seeing to it that the rescript is effective, though it is clear that the petitioners have already approached the *rationalis*. Indeed, the emperors even draw a distinction between those matters about which they should not be troubled since they are within the competence of the *rationalis* and matters on which they can be petitioned.⁴⁰ An imperial reply, and one inscribed in permanent visible fashion, is an attempt to turn rights that are theoretical into rights that are respected.*

34. *P. Beatty Panop.* 2. 50. 28 January 300.

This is a letter of Aurelius Isidorus, procurator of the Thebaid. It refers to a *θεῖον πρ[όσταγμα]*. The matter concerns the transportation of columns from Syene to Alexandria. These were presumably intended for one of Diocletian's building projects in Antioch, his

³⁸ For *salutem dicunt* in an imperial greeting, see Constantine's letter to the Orcistans, col. 3, line 9 (*FIRA*² i no 95), and *CTh* 8. 11. 2 (365).

³⁹ For a petitioner returning a second time, note Calpurnia Aristaeneta at *FV* 282 (Feb 286). For repeated appeals to governors, see *CJ* 7. 14. 5.

⁴⁰ This is according to the translation of lines 2–3 given by Brennan (1989: 196). Note, however, that there are problems over the text and trans. at this point (*ibid.* 200).

current residence, or Nicomedia.⁴¹ An imperial letter probably lies behind this command.

35. *CJ* 3. 3. 3. *exemplum sacrarum litterarum ad Serapionem*. Given 25 March 300, at Antioch.⁴²

The recipient is addressed as *gravitas tua*. The subject is *pedanei iudices*. The recipient may be the same as in no. 42.

36. Aphrodisias Currency Inscription (also edict catalogue, no. 10). Before 1 September 301. See J. Reynolds in Roueché (1989), 254–65.⁴³

The exact nature of the documents in this inscription is unclear, but there is certainly an imperial letter here, since the phrase *scire te con[uen]it* (frag. e, line 3) shows that there was an addressee, possibly the provincial governor or the *rationalis*.⁴⁴ The earlier part of the inscription, preceded by the extensive imperial titles, is probably an edict. According to the newly reconstructed text, the heading of the letter appears to be marked by the words, almost as if it were a heading from one of the law codes, *Idem im[p]p Augg vacat*. The text continues after a gap with the words *sua benivolentia* and on a new line *sit studium*. *Benevolentia* is normally associated with the emperors, so that a third-person reference might form part of the heading: e.g. 'the emperors in their benevolence say such and such'. Alternatively, they might refer to some official(s): 'let them be eager in their benevolence (to the provincials?) to fulfil our commands'.⁴⁵

The connection between edicts and letters in the process of issuing legislation in this period is not clear (see Chapter 7 Section iv). The relationship of the two texts is further discussed in the edict catalogue, no. 10.

Note that the letter refers to both a *lex* and a *statutum*, though there is no way of telling if this is a reference to itself or the preceding edict,

⁴¹ For Diocletian's building projects, see Lact. *DMP* 7. 8–10 and Malalas 12. 306–9. Columns of Syene granite are preserved in the *frigidarium* of the baths of Diocletian in Rome, and in the peristyle court of the Palace at Split. Note also Diocletian's column (Pompey's pillar) at Alexandria.

⁴² The transmitted date is 294. If correct, the place must be corrupt unless the constitution is attributed to Galerius. Note, however, that the other constitution addressed to Serapion (*CJ* 3. 28. 26) is dated 304.

⁴³ Further as yet unpublished fragments were discussed at a symposium held at the British Museum in June 1991.

⁴⁴ The governor of Phrygia-Caria at this time was probably Fulvius Asticus, known for his edict that published the Prices Edict (see edict catalogue, no. 11a).

⁴⁵ *Benevolentia* may of course be an abstract appellation; see App. F.

or simply describes the entire legislative act of retariffing, irrespective of the form of the documents by which it was enacted. Note also the standard reference to imperial foresight: *per provisionem nostram* (frag. e, line 8).

The exact relationship of the letter to the Prices Edict is uncertain. It may be a complementary measure,⁴⁶ though the dating of the Prices Edict to November or December 301 gives a gap of at least three months between the two. The Prices Edict could, therefore, be in part reactive (or supportive) to the earlier regulation. This is discussed in Chapter 8 Section iv.

The date, 1 September, from which the new tariff takes effect, may have been chosen as marking the beginning of a new tax cycle.^{47*}

37. *Coll. 15. 3. Iuliano proconsuli Africae*.⁴⁸ Given 31 March 302(?), at Alexandria.

This is the famous letter on the Manichees. The emperors' names are corrupt, but are normally restored to give the first tetrarchy. The year is missing and that given above is by far the most likely. However, three other years can be made to coincide with a possible imperial presence at Alexandria and an appropriate gap in the *fasti* for Africa: 287, 297, and 307.⁴⁹

This is a true rescript: *de quibus sollertia tua serenitati nostrae retulit... audivimus* ('We have listened to those things which Your Wisdom reported to Our Serenity') and *omnia, quae pandit prudentia*

⁴⁶ For discussion of these measures, in relation to the coinage, see Hendy (1985: 450-62). He describes the letter as 'accompanying' the Prices Edict.

⁴⁷ See Barnes, *NE* 231-2.

⁴⁸ He is identified as Amnius Anicius Julianus, consul 322 and urban prefect 326-9 (*PLRE* i, Iulianus 23, pp. 473-4) or perhaps as his father (Barnes, *NE* 102). Bruce (1983) suggests that Julianus was executed on fabricated treason charges as a victim of Maximian's greed and thus came to be represented as a real rebel in Africa as reported by Aurelius Victor, *Caes.* 39. 22.

⁴⁹ For the dating to 302, see Barnes (*NE* 55 n. 41, with references). Note that Ambrosiaster (*Ad Tim. II* 3. 7. 2 in *CSEL* vol. 81/3) attributes what must be this law to Diocletian (cf. poss. allusion at Val. III, *Nov.* 18). For the other dates, here are some points of interest: (1) 287: This would conveniently predate the proposed publication date for *CG*, but the inscription does look like a corrupt version of a tetrarchic college. (2) 297: Diocletian could have been in Alexandria before the revolt of Domitius, and the proconsulate of Dionysius (dated 296-300 by Barnes, *NE* 169) could be shifted by one year to place Julianus in 296-7. See Chadwick (1979: 137-44) and Bruce (1983). (3) 307: This date supposes that Maximinus issued the letter, when consulted by the proconsul of Africa, who may have been unwilling to commit himself in the struggle then under way between Maxentius and Severus. This is an interesting, but highly speculative suggestion.

tua in relatione religionis illorum. ('Everything which Your Prudence explained in your report about their religion').

The language is filled with significant words to denote ancient Roman virtue and new Persian vice. Note also the final exhortation: *devotio tua iussis ac statutis tranquillitatis nostrae maturet obsecundare* ('Let Your Devotion hasten to obey the orders and decrees of Our Tranquillity').

Since the emperor is here corresponding with Africa from Alexandria, this shows that, whatever divisions were made under the tetrarchy, Diocletian could still be consulted by and reply to officials outside his immediate geographical sphere.⁵⁰ Note that both the *metalla* for the condemned are in the east.⁵¹ The consultation may have been directed to Diocletian because of his senior status. It could also arise from his position in the east. Since the sect is regarded in the letter as a Persian delinquency,⁵² the emperor nearest to Persia might be regarded as best placed to respond knowledgeably. This confidence is misplaced, however, since, although the emperor has already heard about the Manichees, he seems to derive most of his information from the proconsul's letter and his action against them appears new, not a reiteration of existing measures elsewhere.

The condemnation to hard labour included the *honorati*, who might have been expected to be exempt from this punishment.⁵³ For the burning of books, see edict catalogue, no. 12.

38. Agathangelus, *Histoire du Règne de Tiridate*, 14. 67–8 (FHG v/2. 139–41). 'Imperator Caesar Diocletianus to my beloved brother and fellow-ruler Tiridates.' Dramatic date c.303?⁵⁴

⁵⁰ This may reflect the status of the proconsul of Africa. The other explicit example of Diocletian writing to the west is also to Africa (from Sirmium, 293), in which the petitioner is told to approach the proconsul (CHV 2. 1). Note that Maximian answers a petition with a similar instruction to approach the proconsul, but when he himself was in Carthage in 298 (FV 41).

⁵¹ Maximinus sent an official in charge of *metalla* to Palestine, whose writ enabled him to send prisoners to sites outside the province in Cyprus and Lebanon (Eus. MP 13. 2). However, his area of authority may not have been confined to the province of Palestine and he was in any case within Maximinus' sphere of rule.

⁵² Cf. Eus. HE 7. 31. 2. See also the Damascus incest edict, catalogue no. 3 (both subjects are discussed by Chadwick 1979).

⁵³ Millar (1984: 140–1).

⁵⁴ The story is so fanciful that the dramatic date is hard to determine, but if any genuine letters on the Christians did pass between Diocletian and Tiridates, the context of the Great Persecution is the most likely setting. For the text of the reply from Tiridates to Diocletian, absent from the common Armeno-Greek recension but present in the Greek life, see Chaumont (1969: 140).

This purports to be a letter sent by Diocletian to Tiridates III of Armenia. The emperor is demanding the return of a Christian girl, whom he wishes to marry, but who has fled to Armenia.⁵⁵ The original history of Agathangelus, who was secretary to Tiridates, is only preserved in a hagiographical redaction. While aspects of the legislation of Tiridates are reflected in the received text, the imperial letter is entirely fictional.⁵⁶ Nevertheless, I include it in my list as a reminder of the genuine correspondence that must have passed between the emperor and rulers outside the empire.⁵⁷

39. *CJ* 5. 73. 4. *Alexandro*. Given 8 June 303, at Durostorum.

The recipient is addressed as *gravitatem tuam* in what is probably a rescript on a particular case. The subject is *praescriptio longi temporis*. The recipient may be the vicar of Africa (and later usurper).⁵⁸ If so, this is an example of communication from Diocletian in the east to the west.

40. *CJ* 3. 3. 4. *Firmino*. Given 22 November 303(?), at Joppa?⁵⁹

The subject-matter of *pedanei iudices* makes it certain that the recipient is an office-holder.

41. *Passio Sabini*. Maximian to Venustian, Augustal of Tuscia. Given 30 April 304.⁶⁰

This letter is preserved in a martyr act, whose authenticity is dubious

⁵⁵ There are suggestions that the story echoes that of the vicissitudes of Valeria, Diocletian's daughter, after the death of her husband, Galerius (*FHG* v/2. 137). See Chaumont (1969: 138 n. 2).

⁵⁶ For Tiridates' two edicts on the Christians, see Agathangelus 12. 57-8 (*FHG* v/2. 134-6) and Chaumont (1969: 136-41). The heading of the first edict translates as: 'Tiridates, King of Great Armenia, to all the nobles, princes, satraps, governors, and all others subject to my authority, in the cities, villages, and countryside, to men free and unfree, to you all, greeting!'

⁵⁷ See also the letter of Constantine to Shapur (App. D), of which one scholar has even proposed Tiridates as the true recipient (Decker 1979). Note also the letter of Constantius II to the rulers of Ethiopia (Athanasius, *Apol. Const.* 31) and his exchange of letters with Shapur in 358 (Ammianus 17. 5. 3-14, with the comments of J. F. Matthews 1989: 485 n. 12).

⁵⁸ He held office as vicar c.303-8 (Barnes, *NE* 145, who does not note this text). *PLRE* i. 39 supposes that the recipient should be an eastern governor.

⁵⁹ The date or place or both must be corrupt. Diocletian was in Rome in Nov. 303 and Galerius was on the Danube. Barnes (*NE* 55 n. 40) suggests Joppa in 301, although the most likely corruption of the imperial consular date is from another such date. Nov. 299 in Joppa is perfectly plausible.

⁶⁰ For a recent publication of this text (with some slight emendations) plus a discussion of its authenticity and implications, see Liebs (1987: 39-51).

and which was probably composed in the fifth century. The title of the recipient cannot be correct.⁶¹ The text is also problematical, since the reference to sacrifice conflicts with more reliable evidence that no imperial pronouncement enjoining sacrifice was promulgated in the west.⁶² Eugenius Hermogenianus, named in one recension as praetorian prefect (in the others as urban prefect), has been identified with the jurist Hermogenian, although the new inscriptional evidence, which shows that there was a prefect Aurelius Hermogenianus at this time, does not confirm the *Passion's* reliability. This has already been discussed in Chapter 4 Section iv no. 1. The dubious reference to a *suggestio* by Hermogenian considerably antedates the earliest firmly attested occurrences of the term.⁶³ Although the letter is almost certainly spurious, I include it for the sake of completeness.

42. *CJ* 3. 28. 26. *Serapioni suo salutem*. Given 28 August 304, at Nicomedia.

A short constitution on wills otherwise indistinguishable from a private rescript. The recipient may be the same as in no. 35.

43. *CJ* 10. 42. 10. *exemplum sacrarum litterarum ad praefectos*. 293/305.

This is the only Diocletianic constitution addressed to the praetorian prefects. The phrase *praesidibus significamus* suggests that the emperors are here acting via the prefects, conveying to them their wishes which the prefects are to disseminate further. After Diocletian, constitutions are regularly issued to the praetorian prefect(s). The next attested example chronologically is the letter of Maximinus to Sabinus in 312.⁶⁴ In *CTh* praetorian prefects are the major category of addressees, at least from 324. This new importance of the prefects may reflect the growth of active general legislation.⁶⁵

44. *Chr.* ii no. 381 = *P. Lips.* 44. *Impp Diocletianus et Maximianus Augg et Constantius et Maximianus nobb Caess. ad synodum xysticorum et thymelicorum et ividem*. 293/305.⁶⁶

This imperial communication follows a petition and limits civic immunity to those professional athletes and other performers victorious in

⁶¹ The recipient should have been *corrector* of Tuscia and Umbria.

⁶² Ste Croix (1954). ⁶³ *CTh* 12. 1. 33 (342) and 8. 4. 4 (349).

⁶⁴ Eus. *HE* 9. 9a. 1-9 (letter catalogue, no. 57).

⁶⁵ See Ch. 7 Sect. iv.

⁶⁶ On athletes and emperors, see Millar (1977: 456-63).

certain specified contests (those at Rome, the traditional Greek games, and any that are imperially established), who have gained their prizes without corruption. It is not clear that this copy is of a letter rather than a *subscriptio*, since the heading lacks any appropriate epistolary greeting. However, the emperors use quite emphatic language: *ad praeces vestras dato scripto declaramus*.

Among the large and diverse selection of Diocletianic rescripts concerning civic liabilities in *CJ* is a constitution addressed to Hermogenes, presumably an athlete. This is similar in content to our papyrus text, though more terse, but requires three victories for an exemption, which number is normally restored back into the fragmentary text of the papyrus.⁶⁷ Clearly the imperial policy towards athletes, though apparently consistent, had to be reiterated. Malalas records that victors in the Olympic games at Antioch received imperial rescripts (*sacras*) as prizes from Diocletian, perhaps conferring privileges or immunities.⁶⁸

45. Tymandus Letter, to Lepidus (governor of Pisidia?). *FIRA*² i no. 92 (*CIL* 3. 6866 = *ILS* 6090 = Bruns⁷ no. 34). Late third/early fourth century.⁶⁹

The document grants civic status to the Tymandeni.⁷⁰ Although the opening of this document is missing, the text includes the phrase *Lepide carissime*. It is, therefore, an *epistula*, probably directed to the governor of Pisidia.⁷¹ The language of the text is consistent with our period and, with its first person plurals and reference to the immortal gods, implies a plurality of pagan emperors. Lines 3–4 might be restored along the lines of: *ad scientiam nostram[... dicatio] tua pertulit*, thus showing the governor intervening on behalf of the town, as did the vicar in the case of the Orcistans.

⁶⁷ *CJ* 10. 54. 1. This mirrors the papyrus in its criteria, in that the holder of the exemption must (1) be a full-time competitor, (2) have won victories in Rome or the old Greek games, and (3) must not have obtained his prizes through corruption (for a reference to athletic corruption in what may well be a near-contemporary text, see Russell and Wilson 1981: 380–1). The rescript is headed *AA et CC*, and so probably dates to one of the major *CH* years, 293 or 294. For earlier Diocletianic interest in athletes, dated to 289, see *P. Oxy.* 2475–7.

⁶⁸ Malalas 12. 310.
⁶⁹ For text with brief comments, see Abbott and Johnson (1926: 488–9). Bruns⁷ no. 34 suggests a Diocletianic date. Diocletian is assumed as the author of the letter by A. H. M. Jones (1964: ii. 719–20).

⁷⁰ See also *FIRA*² i no. 95 (Orcistus); cf. sentiments of *ILS* 705 (HisPELLUM).

⁷¹ Only one other Lepidus, of the mid-3rd cent., appears in *PLRE* i. 504. More recent evidence, however, attests a Julius Lepidus v.p. as governor of Epirus in 293 (*AE* 1984. 815).

(b) *Texts Excluded from List of Letters***D1.** *CJ* 7. 35. 2. *Aurelio archiatro* (February 286).

This is a good example of a private rescript directed to someone of high rank, indeed to someone serving with the imperial *comitatus*. He still approaches the emperor with a petition and is not granted epistolary reply.⁷² This text is important for informing us about the personnel and functioning of Diocletian's court.⁷³ The dispute is to be adjudicated by the praetorian prefect.⁷⁴

D2. *CJ* 3. 38. 4. *ad Maximum* (October 290).

This should be a private rescript, since the petitioner is addressed in the second person. It is the only use of *ad* in the heading of a demonstrable private rescript. It must be noted, however, that some private petitions on legal cases were granted epistolary reply.⁷⁵

D3. *CJ* 9. 41. 12. *Asper* (May 291).

Asper is identified as a governor by *PLRE* i. 118, on the grounds that the constitution deals with the validity of slave evidence given under torture, but the text is assigned to Charisius by Honoré.⁷⁶

D4. *CJ* 5. 30. 2, 5. 31. 9, 5. 70. 4 (all April 293, Byzantium), and 8. 17. 9 (December 294). *Asclepiodotus*.

PLRE i. 115 makes the recipient of these texts the praetorian prefect Asclepiodotus, who was most likely at the court of Maximian.⁷⁷ Two of the constitutions address the recipient in the second person singular, though not in such a way as to identify him certainly with one of the parties. These could plausibly be rescripts in reply to consultations, especially 5. 70. 4 (*cum . . . significas, intellegis*).⁷⁸ However, it seems unlikely that Diocletian in Byzantium would be replying to communications from Maximian's praetorian prefect, although he could be and was consulted by western office-holders.

⁷² This rescript is considered consistent with the style of no. 17/18 (Honoré, *EL*² 150 n. 79, 155 n. 141).

⁷³ For other imperial doctors, see Millar (1977: 491, 494).

⁷⁴ cf. *CJ* 1. 19. 1.

⁷⁵ Note in particular *CGV* 2. 2 (259?) and *FV* 272 = *CJ* 8. 55. 1 (249). See also Millar (1977: 470–2).

⁷⁶ *EL*² 158 n. 212; 160 n. 267.

⁷⁷ See Ch. 4 Sect. iv no. 1; also Howe (1942: 85), who notes an earlier observation that the name is common at this period.

⁷⁸ This is not so different in tone from the letter *CJ* 9. 20. 7 (287): *Quoniam . . . significas/non dubitabis . . .* But note three other examples from private rescripts: *CJ* 4. 19. 18, 8. 13. 13, 8. 42. 11 (all from Apr. 293 addressed to women).

D5. *Cons.* 6. 14 (= *CJ* 4. 20. 7). *Aurelio Diogeni* (April/May 293).

Kolbe (1962: 35 n. 4) considers it questionable whether the Numidian governor Aurelius Diogenes was the recipient of this text. Rejection is correct. The content of the rescript is clearly addressed to a private petitioner, while the parallel *CJ* heading is even directed to two named recipients.

D6. *CJ* 2. 3. 23. *Honoratus* (Posted November 293, Sirmium).

PLRE i. 438 (*Honoratus* 1) adds this to our nos. 6–7 and deduces that *Honoratus* was governor of Pannonia Inferior from the place of posting. However, this text is probably a private rescript and therefore posted at the imperial residence. It has no bearing on the origin of the recipient.

D7. *CJ* 3. 13. 3. *Iudae* (December 293). ✱

It has been suggested that this is an *epistula* or private rescript on juridical powers in the Jewish community addressed to the Patriarch Judah III, who would have been of high rank.⁷⁹ This conclusion remains uncertain and it may be addressed to an ordinary litigant (though probably Jewish on account of the name).⁸⁰

D8. *CJ* 8. 1. 3 (December 293, Sirmium), 6. 1. 2 (April 294). *Pompeianus*.

PLRE i. 114 identifies the recipient with the former prefect of Egypt.⁸¹ *Honoré* (*EL*² 168 n. 351) assigns *CJ* 8. 1. 3. to *Hermogenian* as *magister libellorum*.

D9. *CJ* 6. 24. 10. *Asclepiadae* (August 294, Sirmium).

The recipient is identified with *Asclepiades*, possibly praetorian prefect, by *PLRE* i. 114 (*Asclepiades* 2), though the dative of the rescript implies that correctly the recipient here should be named *Asclepiadas*. *Honoré* presumes that this is a private rescript of secretary no. 20 (*Hermogenian*).⁸²

D10. *CJ* 2. 56. 1. No addressee. (October 294).

Honoré (*EL*² 140 n. 5) lists this as a letter, although attributing it to *Hermogenian* as *magister libellorum* (*EL*² 168 n. 351; 174 n. 437). It

⁷⁹ By the late 4th cent., the patriarch is attested as *illustris* (*CTh* 16. 8. 8, 11, 13), but only *spectabilis* in 404 (*CTh* 16. 8. 15).

⁸⁰ For discussion and full bibliography, see Linder (1987: 113–17).

⁸¹ For *Pompeianus* as a doubtful praetorian prefect, see Howe (1942: 88–9).

⁸² *EL*² 177 n. 503.

refers to the judge in the third person. I think it most likely that it is the name of a private recipient that has been lost from the heading.

D11. *CJ* 9. 51. 12 (also 8. 50. 18).⁸³ *Tryphoni pp?* (November 294).

This recipient is given as a possible governor or praetorian prefect in *PLRE* i. 924, but one of these texts is assigned to the *a libellis* no. 20 (Hermogenian) by Honoré.⁸⁴

D12. *CJ* 9. 1. 18. *Iuliano pp* (February 304).

This is clearly a private rescript. The letters *pp* are probably a mistaken addition. They might stand for *p(raefecto)* *p(raetorio)* or possibly *p(raesidi)* *p(rovinciae)*. The evidence for praetorian prefects in office at this time is discussed in Chapter 4 Section iv no. 1.

D13. *FV* 38.

This is a fragmentary letter, revealed by the words *Fauste carissime*. Although most imperial constitutions in the Vatican Fragments are Constantinian and earlier, this text occurs immediately after a law of Valentinian I. It is therefore difficult to assign it to any particular emperor. There are a number of Fausti who might be identified as the recipient.⁸⁵ A suitable Diocletianic office-holder might be Anicius Faustus, urban prefect in 299–300.⁸⁶ This suggestion, however, is too tentative to warrant inclusion in our list.

III THE SECOND TETRARCHY TO THE FALL OF MAXIMINUS

All the letters from 313 emanate from Constantine except for the edict of Milan, which was issued by Licinius, and the non-imperial letter from Anullinus in Africa.

Catalogue 305–13

46. *CJ* 6. 9. 7. *Pars epistulae Constantii et Maximiani AA. et Severi et Maximini nobilissimorum CC.* 8 September 305.

This document on *bonorum possessio* in connection with *tutores* and *pupilli* has no recipient. There is nothing in the text to show that it is a rescript.

47. *CJ* 5. 42. 5. *Impp. Constantius et Maximianus AA. et Severus et Maximinus CC.* Given 22 December 305.

⁸³ See also Howe (1942: 89), who discounts *CJ* 8. 50. 18.

⁸⁴ *EL*² 181 n. 556.

⁸⁵ *PLRE* i. 328–30.

⁸⁶ Barnes, *NE* 99.

This document (concerning *tutores*) lack any recipient. It may not be a letter or an edict and would thus be the only known private rescript of Constantius and Galerius.

48. *CJ* 3. 12. 1. *Impp. Constantius et Maximianus AA. et Severus et Maximinus nobilissimi CC. Verino*. Given November (?) 305, at Apollinopolis Magna (*D.non . . . Apollonio superioris*).⁸⁷

This letter, which emanates from Maximinus, is a true rescript. Note especially the words *Quoniam consulis . . . , Verine carissime, rescribi placuit experientiae tuae* ('Since you consult us . . . , dearest Verinus, it has pleased us to reply to Your Experience').

This is the only certain constitution that can be assigned to a tetrarch with the rank of Caesar.⁸⁸ The text establishes that holidays for imperial victories should not affect the time-scale for appeals.

49. *CJ* 7. 16. 40. *exemplum sacrarum litterarum ad Verinum*.

Though undoubtedly a letter bearing the recipient's name, this constitution is not attributed to any emperor(s). It may belong to the second tetrarchy by association with no. 48 above (Maximinus) or to the first tetrarchy by association with no. 28 above (Galerius at Damascus), although that too may belong to 305 (Maximinus at Damascus).⁸⁹ The subject is *de liberali causa*.

50. *P. Oxy.* 2106. 29 June 306.

This is a letter from the prefect of Egypt (Clodius Culcianus) to Oxyrhynchus. Neither year nor prefect are specified, but are inferred from the text, mainly from the value of gold given as compared to other dated texts.⁹⁰ The prefect refers to *θελαι γράμματα* of the emperors and Caesars instructing that gold be delivered to Nicomedia by 4 Thoth, that is 1 September. This would be the beginning of the tax year, indeed of a new five-year census period.⁹¹ The diurnal date of the prefect's letter is deduced from the fact that thirty days are given for the delivery of the gold to Alexandria by 5 Mesore (29 July).

The emperors have written to the prefect, but not apparently to the *catholicus* to whom the prefect himself has had to write.

The imperial letter may emanate either from Galerius, or from Maximinus acting on Galerius' instructions. Barnes places Galerius in

⁸⁷ See Morris (1965: 363) and Barnes, *NE* 66.

⁸⁸ Honoré (*EL*¹ 145) mistakenly assigned this text to his secretary no. 19 as *ab epistulis* to Constantius, instead of Maximinus (Ch. 4 Sect. iv no. 3). On the Caesars' powers, see Ch 11 Sect. iii.

⁸⁹ As suggested by Corcoran (1993: 118 n. 124).

⁹⁰ Bagnall (1985: 28).

⁹¹ See Barnes, *NE* ch. 14.

the Balkans at this time, with Serdica as his main residence.⁹² The delivery to Nicomedia, however, may imply that he was there instead in the summer of 306, busy with the census, only campaigning on the Danube in early 307.

51. Optatus 1. 17. Rescript of Maxentius to official in Carthage, 308/11.

When a deacon of Carthage was charged with writing a letter defamatory of a 'tyrant' emperor, Mensurius, bishop of Carthage, hid him in his house. An imperial rescript arrived, probably in answer to a *consultatio* from the proconsul or vicar of Africa, and instructed that Mensurius be sent to the imperial court, if he did not surrender the accused. Mensurius travelled to the court, defended himself, but died before he could return to Carthage. Neither the identity of the emperor nor the location of the court is identified. Italy seems the most plausible location. If 'tyrant' means persecutor, the emperor should be Maximian or Severus, although Maximian is the more likely, as the persecution in Africa, though only formally ended by Maxentius, seems to have been wound down already after the abdication of Maximian in 305. It seems improbable, however, that a bishop could appear before an emperor and go unacquitted in a time of persecution. Further, this interpretation rather stretches the time-scale for the death of Mensurius, the election of Caecilian, and the explosion of the Donatist controversy, although the chronology of the origins of the Donatist controversy (as indeed of the reign of Maxentius) is extremely uncertain. It is possible, however, that the reference could be to Maximian restored in 307/8, before his break with Maxentius in April 308, after which Maxentius was no doubt happy to acquit Mensurius.⁹³ Alternatively, 'tyrant' might be interpreted here as 'usurper', thus Maxentius, and the defamatory letter could belong to the period of savage reprisals after Maxentius' reconquest of Africa from Domitius Alexander.⁹⁴ The fact that Optatus describes Maxentius' ending of the persecution in the succeeding passage need not be taken as strict chronology (Optatus 1. 18).

52. Augustine, *Brev. Coll.* 3. 18. 34 and *Don. Post Gesta* 13. 17. Maxentius orders restoration of property. 310/12.

⁹² Barnes, *NE* 62, 64.

⁹³ For the identification of the emperor as Maximian, with a summary chronology, see Barnes (1975b: 18–20). He dates the death of Mensurius to 305 and the election of Caecilian to 307. For the suggestion that the emperor is Maximian restored, see the discussion by Kriegbaum (1992: 36–7). For a summary of work on the controversy, see Mazzucco (1993: 108–11).

⁹⁴ Frend (1952: 15–16); Maier (1987: 131–4).

According to Augustine, Miltiades, bishop of Rome, sent deacons to the urban prefect with letters from Maxentius and his praetorian prefect, authorizing the restoration of church property. Although Maxentius ended the persecution at some point following his seizure of power in 306 (edict no. 21*b*), he may not have ordered full restoration of property immediately. It is possible that restitution was only ordained after the flight of Maximian from Rome in April 308, although Maxentius' relations with the church in Rome were stormy in this year and subsequently, when serious rioting over the treatment of the lapsed and a disputed papal election twice forced him to exile the bishop and leave the see vacant.⁹⁵ These letters, therefore, need not represent a new policy of restitution, but rather rescripts in answer to petitions, asking for practical enforcement of the restitution already granted. It seems clear, however, that Maxentius is matching the favourable stance of Constantine and going beyond the mere toleration later decreed by Galerius in 311. The election of Miltiades seems to have signalled an attempt at improved relations,⁹⁶ and the active implementation of restitution may be another part of this policy.⁹⁷ The motivation might have been a bid for Christian support at a time when confrontation and hostilities with Constantine were becoming increasingly likely, although the obscure chronology of the reign of Maxentius makes interpretation difficult.

53. *FIRA*² i no. 93 = AE 1937. 232. *Exempl(um) sacra(rum) litterarum. Have Dalmati carissime nobis!* 10 June 311, at Serdica.⁹⁸

⁹⁵ The two bishops of Rome were Marcellus I and Eusebius (on whom see Damasus, *Epigrammata* 48 and 18 resp.). For a summary account of this, see Barnes, *CE* 38–9. He dates the death of Marcellus and the brief occupancy of Eusebius to 308.

⁹⁶ The date of Miltiades' election is traditionally taken as 311, following Duchesne's edition of the *Liber Pontificalis* (e.g. Kelly 1986: 26), but Davis (1989: 13) gives 310. I am grateful to Dr Davis for letting me see a draft of an article discussing this question, entitled 'The Chronology of the Roman Bishopric from A.D. 258 to 314'. The earlier dating would make less likely the connection between the courting of Christian favour and the confrontation with Constantine as suggested here.*

⁹⁷ The policy of restitution must have been extended to Africa. The churches had not yet been restored at the time of the council of Cirta (Optatus 1. 14: *basilicae necdum restitutae*), but were so by the time of the dispute over Caecilian's election. Thus Constantine's letter to the proconsul about the restoration of church property in Africa (letter no. 59) may have been prompted by problems arising from Maxentius' suppression of the revolt of Alexander or the desire to prevent any ill effects following from the rescission of Maxentius' other acts. On the question of restitution in both Africa and Rome, see Kriegbaum (1992: 44–9).

⁹⁸ The original publication incorrectly renders the date *III idus Iunias* as 9 June (Paulovics 1934: 548 and 1936: 10–2, 40–2, followed by AE 1937. 232; *FIRA*² i. p. 456;

The document ends with a valediction in the emperor's own hand: *et manu divina, vale Dalmati carissime nobis*.⁹⁹

This is the so-called Brigetio Tablet, preserved on bronze, dealing with military tax privileges.¹⁰⁰ The orders for the publication on bronze of the letter with its privileges, to secure their perpetual enjoyment, has parallels from other contemporary documents.¹⁰¹ The document must emanate from Licinius at Serdica, who took control of the Balkans after the death of Galerius. The original imperial titles are not preserved, only a later addition giving the names of Constantine and Licinius (the latter erased).¹⁰² Maximinus has been erased from the consular date at the end of the document.

The recipient is addressed not only in the greeting and valediction, but three times in the course of the letter.¹⁰³ He is otherwise unknown and his rank is subject to dispute. He is often supposed to be praetorian prefect, *dux*, or at least vicar.¹⁰⁴ However, the conjunction of the forms of address *tua dicatio* and *tua devotio* and the question of military,

van Berchem 1952: 75, 80, 83; and Barnes, *CE* 40 and *NE* 81, 137, 143 n. 13, 232). The date is correctly noted by Amelotti (1961: 270) and *PLRE* i. 240.

⁹⁹ Few other imperial documents of the period give any such sign of the subscription written by the emperor's hand. See *CJ* 1. 23. 3 (Diocletian); Athanasius, *De Decretis Nicaenae Synodi* 38. 9 (Constantine to Alexandria), 39. 2 (edict against Arius), 40. 43 = Gelasius, *HE* 3. 19. 43 (Constantine to Arius), and 42. 3 (Constantine to Theodotus of Laodicea); and the comment of Eus. *VC* 2. 23 on Constantine's letter to the eastern provinces. Cf. *et alia manu: vale* at the end of a letter of bishop Purpurius of Limata (Optatus, *App.* 1 (ed. Ziwsa, 189)). Note the anecdote in *SHA Comm.* 13. 7–8 on Commodus' apparent laziness in only subscribing *vale* at the end of letters (cf. Carinus at *SHA Car.* 16. 8), while the young Constantine II in 321 was already (at least in Nazarius' mind) learning to use his right hand: *iam felix dextera fructuosa subscriptione laetatur* (*Pan. Lat.* 4(10). 37. 6). For later examples, see Athanasius, *Apologia ad Constantium* 23, *Coll. Avell.* 3. 11, 40, 41, 89, 91. 23; Val. III, *Nov.* 1. 3, 9, 16, 17, 19; Majorian, *Nov.* 1; Sivan (1985: 274, lines 19–20); *CJ* 1. 1. 8. 24 = *Coll. Avell.* 84. 21 = 91. 22.

¹⁰⁰ Discussed by Van Berchem (1952: 78–82). The text appears to keep the distinction between legionaries and vexillations as opposed to auxilia, consistent with the attitude of Diocletian (*CJ* 7. 64. 9 and 10. 55. 3).

¹⁰¹ See *CTh* 6. 35. 4 (321): the privileges of the *palatini* to be engraved on bronze; *CTh* 7. 20. 1 (324/6?): veterans allowed to inscribe their privileges on tablets; *CTh* 12. 5. 2 (337): privileges of high-ranking decurions to be engraved on bronze. For other texts on bronze, see Eus. *HE* 9. 7. 1 (Maximinus' rescript to the cities); *CTh* 11. 27. 1 (319?), which gives instructions for the law to be displayed on a variety of substances including bronze. On Roman bronze documents and their symbolism of permanence, see Williamson (1987) and Crawford (1988: 133, 136 n. 23).

¹⁰² See Seston (1937), Corcoran (1993: 104); cf. Ch. 11 Sect. *iva*.

¹⁰³ Lines 8 (*Dalmate carissime*), 12 (*devotio tua*), and 26 (*dicatio tua*).

¹⁰⁴ See variously van Berchem (1952: 80–1), *PLRE* i. 240, and Barnes, *NE* 232 n. 28. There is no need to identify him with Constantine's half-brother Dalmatius (*cos.* 333).

specifically veteran, privileges, occurs in another text certainly addressed to a *praeses* (Florianus).¹⁰⁵ There is therefore no reason why Dalmatius could not have been *praeses* of Valeria.¹⁰⁶

The letter describes the measure as *beneficium legis eiusdem* and *indulgentiae nostrae beneficium perpetuum*.¹⁰⁷ However, it may well be that the letter is not itself a *lex*, but rather a letter promulgating one (probably an edict). This is suggested by the second sentence, which begins *Itaque devotioni tuae significandum esse credidimus, ut . . . iuxta statutum nostrum*.¹⁰⁸

Rhetorical devices are much in evidence: pleonasm and repetition.¹⁰⁹ The opening preface, which sets out the imperial justification and is of precisely the type likely to have been excised in the codes, is particularly marked in this regard:

Cum in omnibus, pro devotione ac laboribus suis, militum nostrorum commodis adque utilitatibus semper consultum esse cupiamus, in hoc etiam, dispositionum nostrarum provisione, eiusdem militibus nostris consulendum esse credidimus . . . unde intuentes labores eorundem militum nostrorum, quos pro reipub(licae) statu et commodis adsiduis discursibus sustinent, providendum ac disponendum esse credidimus ut et militiae suae tempore iucundis laborum suorum fructibus ex nostra provisione se perfrui gaudeant et pos[t] militiam qui[a]eto otio et congrua securitate potiantur.

Since in all things we desire always to take thought for the benefit and advantage of our soldiers because of their devotion and toils, in this matter also we

¹⁰⁵ CTh 7. 20. 1, dated 318 in the MSS, but to 326 by Seeck, RG 176. On these terms of address, see App. F.

¹⁰⁶ As suggested by Corcoran (1993: 104). It is not absolutely clear how to interpret the reference to *tam legionarii milites quam etiam equites in vexillationibus constituti Inlyriciani*. Van Berchem (1952: 81) wanted the adjective *inlyriciani* to denote an elite force lacking any geographical meaning. This was dismissed by Seston (1955: 287 n. 4), who showed the validity of such descriptions. Cooper (1968: 388) suggests that, since Licinius at this point only controlled the Balkans, the term simply denotes the forces throughout his territory. He also argues that the units styled *inlyriciani* stationed in the east (known from the *Notitia Dignitatum*) had been transferred there by Aurelian (ibid. 450–2), although he does concede that they could have been transferred as late as the first civil war between Constantine and Licinius, though not as late as 325 (ibid. 347–9). In either case, the term should be given a geographic interpretation, though this does not help identify Dalmatius' area of authority. Even if it does refer to Licinius' army throughout his territory, it could still occur in a letter to a *praeses*, if that letter was a standard one sent to a range of officials, with only the names changed for each recipient.

¹⁰⁷ Lines 18 and 29; also *indulgentia* (line 31) and *beneficium* (lines 20 and 26).

¹⁰⁸ Lines 12–13. Note the similar phrase in the 'edict of Milan': *Quae sollicitudini tuae significanda esse credidimus* (Lact. DMP 48. 5).

¹⁰⁹ For the late Roman desire to use two words instead of one, see MacMullen (1962: 371).

have believed we should take thought for our same soldiers by the foresight of our measures . . . wherefore, looking upon the toils of our same soldiers, which they bear with continuous effort on behalf of the condition and benefit of the state, we have believed that it should be provided and ordained that by our foresight they should both rejoice in the enjoyment of the pleasing fruits of their toil during the time of their service and after it obtain a quiet retirement and fitting security.

Note the pleonasms,¹¹⁰ and the stress upon imperial *providentia*,¹¹¹ public advantage,¹¹² and the soldiers' basking in imperial favour.¹¹³ Parallels are particularly marked in Constantine's reply to the delegation of veterans.¹¹⁴

The document shows Licinius confidently issuing authoritative pronouncements only a month after the death of Galerius.¹¹⁵ It is likely that it represents an attempt to consolidate his support as he took control over Galerius' European territories and prepared to confront Maximinus at the straits.

54. Eus. *HE* 9. 1. 3–6. Letter of Sabinus, praetorian prefect (to governor of Palestine). Late 311.

This surviving Greek translation of a Latin original is Maximinus' lukewarm response to the toleration edict of Galerius, which he did not promulgate.¹¹⁶ Even this letter is not an imperial letter. Rather it was issued as a result of the emperor avoiding a direct pronouncement of his own. Maximinus simply gave verbal instructions to the prefect.¹¹⁷ Verbal pronouncements by emperors were important in their own right, but here the implication is that Maximinus is distancing himself from the relaxation of the persecution by refusing to see a document with

¹¹⁰ Thus, *devotione ac laboribus, commodis adque utilitatibus, providendum ac disponendum*, and *quifajeto otio et congrua securitate*.

¹¹¹ Thus *dispositionum nostrarum provisione* echoed by *providendum ac disponendum*; in addition, *provisio* occurs in lines 20, 30, 34.

¹¹² *Commodis adque utilitatibus* and *pro reipub(licae) statu et commodis; commoda* occurs also at lines 19 and 34.

¹¹³ *Perfruor* occurs four times (lines 11, 25, 29, 34).

¹¹⁴ Note *quiete post labores suos perenniter perfruantur and integra beneficia eorum . . . otio et pace perfruantur* [*proferantur* in Pharr 1946: 23, 25 n. 31], *et eorum senectus quiete post labores perfruantur* (CTh 7. 20. 2. 5–6).

¹¹⁵ The exact date of Galerius' death is unknown, but it was in early May 311 (Lact. *DMP* 35. 1–4). See also edict catalogue, no. 26.

¹¹⁶ Eus. *HE* 9. 1. 1. Eusebius states that Galerius' edict was published in Asia and the surrounding provinces.

¹¹⁷ How Eusebius knew this to be so is not clear. It may simply be an inference from the publication of the prefectural and not an imperial letter in Palestine. If true, however, Maximinus may still have issued his instructions formally in the *consilium*, with the proceedings recorded in the imperial *acta*.

his name and titles disseminated in his territory. This contrasts with Licinius in 313, who not only caused the posting of the 'edict of Milan' in the newly conquered provinces, but supplemented it by adding verbal encouragement of his own.¹¹⁸

To some extent, the letter echoes the toleration edict of Galerius. Both speak of the imperial desire to foster proper Roman religious practice which had been thwarted by the obstinate folly of the Christians. But the freedom to build churches and hold meetings accorded by Galerius is not repeated. Instead, Sabinus' letter ends with an instruction for the governor to write to a variety of city officials to ignore previous documents that encouraged persecution.¹¹⁹

55. Maximinus' rescript on the Christians (312):

(1) Copy to Colbasa, given at Sardis, 6 April 312, in Latin (Mitchell 1988: 108 = *AE* 1988. 1046) (see Pl. 4).¹²⁰

(2) Copy to Arycanda in Latin (*CIL* 3. 12132, updated version at Mitchell 1988: 110 = *AE* 1988. 1047; see now S. Şahin (1994), no. 12).

(3) Copy to Tyre, given in a Greek translation (*Eus. HE* 9. 7. 3-14).

Maximinus' rescript to the cities against the Christians survives in three copies, the first two on stone in Latin, the third in a Greek translation made by Eusebius from a bronze tablet. Although both the Latin inscriptions only give a small portion of the whole (from the final section), the close parallels between them, and with Eusebius' Greek, make it likely that all the cities that petitioned for the removal of Christians were answered by an almost identical letter. The first city to do so was Nicomedia and other cities that followed suit included Antioch. The whole affair, as Eusebius and Lactantius allege, appears highly orchestrated.¹²¹ It may well be that the abolition of the city poll-tax in Lycia-Pamphylia (see next entry) was the reward held out to the cities in that province for their compliance in submitting a petition that the emperor wanted to hear.¹²² However, despite the lack of spontaneity in

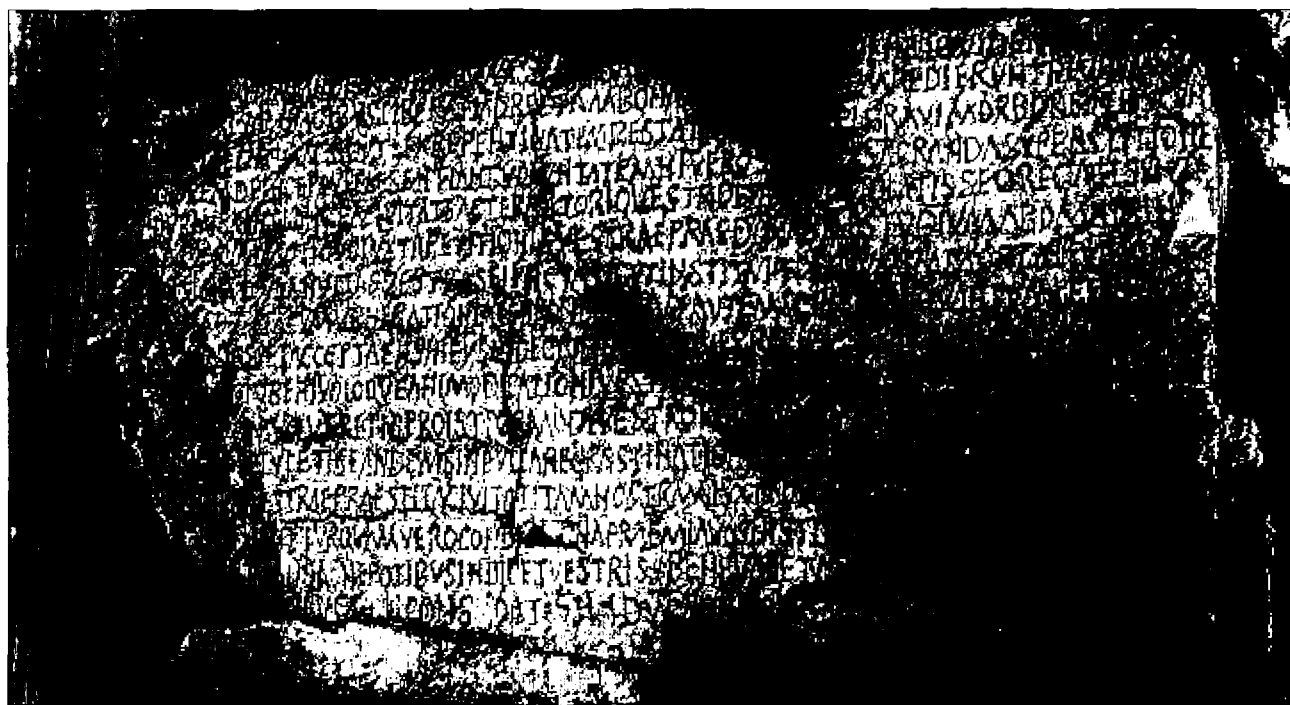
¹¹⁸ Lact. *DMP* 48. 13. On verbal pronouncements, see Ch. 10.

¹¹⁹ However, the Christians in Maximinus' territory did indeed start to meet publicly again (*Eus. HE* 9. 1. 8), an action they did not dare repeat two years later after Maximinus' second relaxation of persecution (letter no. 57).

¹²⁰ See Konrad (1989) for a minor correction to the dating as given in Mitchell's text.

¹²¹ Mitchell (1988: 117-19).

¹²² Thus *ibid.* 121-3. The late isolated examples of civic coinage (Nicomedia, Alexandria, Antioch) may also be a sign of Maximinus' favour towards and manipulation of the cities (van Heesch 1993). A more proactive imperial attitude can also be seen in Maximinus' appointment of provincial high priests (see Nicholson 1994).



4 Mitchell (1988) = AE 1988. 1046 = letter catalogue, no. 55 (AD 312). The final section of the rescript of Maximinus on the Christians, Latin fragment from Colbasa

the petitions, the imperial communication was still technically a rescript. The concern for proper worship of the gods in the petition from Lycia and Pamphylia is echoed in the imperial reply, which also stresses the advantages of divine favour and the disasters awaiting the ungodly.¹²³ It is important to note that Maximinus did not choose simply to issue an edict or letter on his own account, by which he might have seemed to set himself against the imperial college that had supported Galerius' toleration decree. He preferred to claim to act, like a good ruler, in answer to his subjects' prayers. This also provided the basis for apologetics when he relaxed his anti-Christian stance, since he could portray himself as having acted under the compulsion of either the legacy inherited from his predecessors or the pressure from the petitions of his subjects.

The surviving petition calls for ending of the atheists' practices and the rescript's answer is to order the Christians to be driven from the cities.¹²⁴

56. *CTh* 13. 10. 2 (*CJ* 11. 49. 1) (Maximinus). *Imp. Constantinus* to Eusebius *vp, praeses Lyciae et Pamfyliae*. Given 1 June 312.¹²⁵

This text abolishes the city poll-tax in the province, following a similar measure for Oriens, probably in the circumstances described in the previous entry.¹²⁶ The mention of Diocletian (died December 312?) is a unique citation by an emperor of a precedent from a still living predecessor. Accepting the emended date, it is the earliest *CTh* text and the only one of Maximinus. The recipient here, Eusebius, was previously identified as the author (Eu<s>ebius) of a letter in Greek preserved in an inscription from the modern village of Ovacık in Lycia (Harrison 1981: 199–200). The letter is addressed to Kiliortes, village headman (later high priest of the imperial cult under Constantine and the Caesars, 324/37), on the subject of bandits. However, the recently

¹²³ The Greek petition from Lycia and Pamphylia addressed to Maximinus, Constantine, and Licinius survives with the Arycanda copy of the rescript (*CIL* 3. 12132 = S. Şahin 1994, no. 12). Specific decrees from the cities were probably also presented with the petition (Mitchell 1988: 118). The Latin rescript calls the petition *petitio*, although in allowing the recipients to seek a favour, it says they can do so *sine ullo decr(e)to ullisque precibus*.

¹²⁴ This banishment was the wish in the Nicomedian petition, at least according to Maximinus' own account later (Eus. *HE* 9. 9a. 6).

¹²⁵ The MS date is 313; 312 is the date proposed by Mitchell (1988: 123) and defended at Mitchell (1993: 64 n. 68). Seeck (*RG* 159) places it in 311.

¹²⁶ This letter was probably issued from Antioch (Mitchell 1988: 123, though see also p. 119 and n. 40).

published text, *SEG* 41. 1390, gives the author's name as Val(erius) Euethius *eparchos* (prefect); perhaps the same man who earlier was *rationalis* in Egypt c.302/4 (*PLRE* i. 291, Euethius 2).*

57. Eus. *HE* 9. 9a. 1–9. Maximinus' letter to Sabinus. Late 312.

This document, a Greek translation from the original Latin, is an apologia, distancing Maximinus from the persecution, and apportioning blame to anyone but himself.¹²⁷ Even so, he only relaxes the persecution, saying that persuasive words alone should be used to recall Christians to the worship of the gods. Indeed, he claims that earlier letters (presumably no. 54) had already forbidden harsh measures and that it is the *beneficiarii* and the provincials themselves who are the persecutors, not the emperor. But there is no full toleration and restitution as was being carried out elsewhere by Constantine and Licinius. This is the second document in our period addressed to a praetorian prefect and was presumably disseminated to the governors by him.¹²⁸ Eusebius uses the verb *διαχαράττω* (to carve or fashion) to describe Maximinus' composition of the text.¹²⁹ He regards the content of the letter as entirely deceitful and says that, despite it, no Christians yet dared to assemble publicly.¹³⁰

58. *Epistula Constantini* (Silli 1987 no. 27). To Optatianus Porphyrius. December 312?¹³¹

This is a private letter, to a man of senatorial rank, rather than a legal or administrative document. It is, however, a form of rescript in that it is responding to the presentation of a poem or cycle of poems by Optatianus to the emperor. The letter that was sent to the emperor along with the poems also survives.¹³² Only private citizens of high rank can have hoped for personal correspondence with the emperor (see D2 above).

¹²⁷ Mitchell 1988: 114–15.

¹²⁸ Eus. *HE* 9. 9. 13 says that the letter was sent to the governors.

¹²⁹ *χαράττω* is used of coinage struck with Constantine's image (Eus. *VC* 4. 73).

¹³⁰ Eus. *HE* 9. 9. 13 and 9. 9a. 10–11.

¹³¹ The date is that proposed by Barnes (1975a). Polara (1974: ii. 19–20) rejects the authenticity of this and the letter from Optatianus to Constantine. The letters are usually dated by connection with the surviving cycle of poems, sent to help secure the poet's release from exile, probably at the time of the *vicennalia* 325/6 (Millar 1977: 472; Silli 1983: 170 and 1987: 104–5; 324/5 in *PLRE* i. 649). On Barnes's interpretation, the surviving poem collection is unconnected to the imperial letter, and neither may be connected with the surviving letter from Porphyrius (see next note).

¹³² Barnes (*CE* 48) connects this letter to a second presentation of poems.

59. Eus. *HE* 10. 5. 15–17 (Maier 1987 no. 11, Silli 1987 no. 1). Anullinus, proconsul of Africa (greeting and farewell in Greek).¹³³ Probably sent from Rome, winter 312/13.

This letter orders the restoration of Christian property to the Church.

60. Eus. *HE* 10. 6. 1–5 (Maier 1987 no. 12, Silli 1987 no. 2). Caecilian, bishop of Carthage. Probably sent from Rome, winter 312/13.

This interesting letter informs Caecilian about the distribution of cash to the church and the safeguarding of the church from molestation. It reveals the complexity of imperial and official action involved. The correspondence to which the letter alludes is as follows:

- (a) An imperial letter to Ursus, *rationalis* of Africa, on the payment of money to Caecilian.
- (b) A list sent by Hosius to Caecilian of clerics to be given the money.
- (c) Verbal communication (perhaps also in writing?) from the emperor to both the proconsul and vicar of Africa, before they left Rome for Africa, instructing them to see that the church is undisturbed.

Further, Caecilian is told that in the case of financial shortfall he is to approach the *procurator privatae* and in the case of harassment of the church to approach the proconsul or vicar.¹³⁴

By communicating with Caecilian as the legitimate bishop of Carthage, and later in his second letter to Anullinus describing the clergy entitled to immunity as those under the jurisdiction of Caecilian, Constantine was probably already taking a view on the Donatist controversy.¹³⁵

61. *CTh* 15. 14. 3. To Antiochus, *praefectus vigilum*. Given 6 January 313, at Rome.¹³⁶

This letter rules that only Maxentius' rescripts that are *contra ius* are

¹³³ This and nos. 60, 63, and 67 are presumably Greek trans. from the Latin originals, though Eusebius does not explicitly state so as he does with the 'edict of Milan' (Eus. *HE* 10. 5. 1).

¹³⁴ For similar episcopal freedom to approach imperial officials, see Eus. *VC* 2. 46. 3.

¹³⁵ Optatus 1. 22 portrays Constantine as ignorant of the controversy until he received the petition, but most modern writers assume otherwise (Baynes 1972: 10; Frend 1952: 144–5; Barnes, *CE* 56–7; and Girardet 1989: 189; more cautious is Coleman-Norton 1966: 43 n. 11, 45 n. 8). Hosius of Cordoba is often credited with influencing Constantine on this matter.

¹³⁶ The MS date is July 326, but Seeck (*RG* 160) emends this and the next letter (to the Senate) to Jan. 313. This is far more appropriate as action taken in Rome after the fall of Maxentius, rather than following the defeat of Licinius, who never ruled Rome.

invalid. Rescripts *contra ius* were not valid in any case, even if issued by a legitimate emperor.¹³⁷

62. *CTh* 15. 14. 4. To the Senate. Given 13 January 313, at Rome.¹³⁸

A second letter dealing with the aftermath of the overthrow of Maxentius, this seeks to restore to the Senate those whom Maxentius had forced into the ranks of the *navicularii*, and presumably resulted from complaints on the matter presented to the emperor in Rome.¹³⁹

Letters to the Senate are relatively rare in our material.¹⁴⁰ This one is clearly on a matter of specific relevance to the Senate. But note also Constantine's letter of 315 addressed *consulibus, praetoribus, tribunis plebis, senatui*,¹⁴¹ on the subject *de maternis bonis*, no doubt of interest, but not of sole interest, to senators. This was sent when the emperor was approaching Rome on 18 July and was read out in the Senate in the presence of the urban prefect on 13 September, before the emperor's departure.¹⁴²

Neither text is described as an imperial *oratio in senatu habita*, though that is what in effect these were.¹⁴³ The subscript of *CTh* 8. 18. 1 does

¹³⁷ For further discussion of rescripts *contra ius*, see Ch. 3 Sect. iv and edict catalogue, no. 40.

¹³⁸ For the date, see letter no. 61.
¹³⁹ Maxentius' action probably arose from his justifiable concern over the corn supply, once the revolt of Domitius Alexander in Africa had impressed upon him the importance but precariousness of the shipping of corn to the city. For the famine probably caused by the revolt, see *Pan. Lat.* 12(9). 4. 4 and the Chronographer of 354 in *Chron. Min.* i. 148.

¹⁴⁰ Note the letter of 337 to the Senate preserved on a statue base, which grants permission for the statue honouring an urban prefect, and uses the same list of addressees as *CTh* 8. 18. 1 (*AE* 1934. 158). See Chastagnol (1960: 365–6; 1962: 100–1). Note also the curious subscript, *pp. Romae ad senatum*, at *CJ* 2. 52. 6, presumably physical posting of the letter to the urban prefect at the *curia*.

¹⁴¹ *CTh* 8. 18. 1. Since 315 was a year in which Constantine and Licinius held the consulship together, the inclusion of the consuls in the heading (unless purely formulaic) provides a rare indication at this period of the continued existence of suffect consuls. Cf. *Val.* III, *Nov.* 1. 3 (450).

¹⁴² See Seeck, *RG* 163–4. Constantine left the city on 27 Sept. The reading of the letter was presumably delayed because of the festivities surrounding the *decennalia*. Although the emperor was still in Rome, the text does not indicate that he attended this meeting of the Senate.

¹⁴³ Note that Valerian's persecution measure of 258 was issued in Rome as an *oratio* to the Senate (also described as 'rescriptis Valerianum ad senatum'), but it also referred to other letters already sent to provincial governors (Cyprian, *Ep.* 80. 2–3). Cyprian's information from Rome arrived more quickly than the letters to the governor, which were still being awaited. This communication to the Senate in addition to the other imperial letters may have been standard procedure, but had special relevance to the Senate in Rome, because it contained specific provisions concerning senators and *equites*. See trans. and commentary of Clarke (1989: 296–310). On the persecution of Valerian, see Keresztes (1975) and Haas (1983).

not indicate who read out the imperial missive, though probably no longer the *quaestores Augusti* or *candidati* as under the principate. Constantine is credited with creating the office of imperial *quaestor*, a court-based rather than Rome-based post. However, since both these communications coincided with the emperor's presence in Rome, the imperial words may well have been read out by a palatine official.¹⁴⁴

After the overthrow of Maxentius, Constantine addressed the Senate in person, restoring its *pristina auctoritas*.¹⁴⁵ The reversal of Maxentius' demotions into the ranks of the *navicularii* is just such a measure, especially as the emperor bestows upon the Senate the power to decide on who should be allowed back among its number and to pass on for imperial confirmation the approved names via the urban prefect. Therefore, despite the lack of indication in the inscription or subscription, it is even possible that this text was one delivered by Constantine to the Senate in person.

63. Eus. *HE* 10. 7. 1-2 (Maier 1987 no. 13, Silli 1987 no. 5). Anullinus, proconsul of Africa (greeting and farewell in Greek). February 313.¹⁴⁶

This letter grants immunity from *munera* to Catholic clerics in the province of Africa and is the earliest surviving such grant by Constantine. It should be considered together with documents nos. 71-2, the first being to Bruttium and Lucania and the second lacking a recipient, both granting or reinforcing immunities to clerics. The number of pronouncements surviving on this topic makes it seem possible that the grant was made, confirmed, or modified area by area.¹⁴⁷ Perhaps a single edict was issued, which then underwent gradual dissemination by letter.

63a. Augustine, *Epistulae* 88. 2 (Maier 1987 no. 14). A. GGG. NNN. (*Augustis nostris*) Anulinus vc proconsul[e] Africae. Given 15 April 313, at Carthage.

This letter is a reply to the preceding one. Note in particular the opening, where the proconsul describes his reception of the imperial

¹⁴⁴ On the origins of the imperial quaestorship, see Harries (1988: 153-5). The exact date of Constantine's reform, even if genuine, is not known and need not be so early as 313 or 315. However, perhaps the imperial quaestor did read out these letters, thus marking the continuity of the quaestor's role from principate to dominate.

¹⁴⁵ *Pan. Lat.* 12(9). 20. 1-2.

¹⁴⁶ Date is given as 31 Oct. by Silli (1983: 164; 1987: 11), following Seeck, *RG* 161. The letter must however precede Anullinus' letter from Carthage (Baynes 1972: 69; Barnes, *NE* 240).

¹⁴⁷ See also *CTh* 16. 5. 1 (326, Oriens) and *CTh* 16. 2. 7 (330, Numidia).

letter: *Scripta caelestia maiestatis vestrae accepta atque adorata* ('the celestial document of your majesty was received and adored').

Exactly what ceremony (if any) was performed is uncertain. The words may be purely metaphorical,¹⁴⁸ implying a reverence towards the imperial missive comparable to the *adoratio* performed before the emperor's person,¹⁴⁹ but a variety of sources suggest that some *proskynesis* or act of reverence might take place.¹⁵⁰

Anullinus encloses two submissions from the Donatists; a bound leather volume containing the charges against Caecilian and an unsealed brief petition.¹⁵¹ This is a rare example from our period of a governor forwarding petitions.¹⁵²

63b. Optatus 1. 22 (Maier 1987 no. 15). Petition of the Donatist party¹⁵³ (Lucianus, Dignus, Nasutius, Capito, Fidentius, and others) to Constantine. April 313.

A short petition requesting the appointment of judges from Gaul to investigate the dispute over Caecilian's election.¹⁵⁴ It is precisely from this petition that Constantine's direct involvement in the Donatist controversy began. Optatus here uses the petition to fling back in their

¹⁴⁸ As at Herodotus 3. 128. 4.

¹⁴⁹ The introduction of *adoratio* of the emperor as a regular feature of court ceremonial is attributed to Diocletian by ancient writers: thus, Ammianus 15. 5. 18, Eutropius 9. 26, Aurelius Victor, *Caes.* 39. 4; cf. *Pan. Lat.* 11(3). 11. 1-2. See Stern (1954).

¹⁵⁰ Thus Datames, at the siege of Sinope, is described as performing *proskynesis* before a letter from Artaxerxes II as if in the presence of the king himself (Polyaenus 7. 21. 5), while the dying Hadrian of Tyre also performed *proskynesis* before a missive of Commodus (Philostratus, *V. Soph.* 590). Lieberman (1962: 8-10) argues that a passage from the *Midrash* reflects the physical reception of Diocletian's persecution edicts, with the people embracing and kissing them, comparing this to a similar account from the *Acta S. Paphnutii* in *Acta Sanctorum, September*, vi (Antwerp, 1757), 24 Sept., p. 686D. For a contemporary account of the physical and emotional reception of a letter from Iamblichus by an anonymous correspondent resident in Licinius' capital Nicomedia, see Ps.-Julian, *Ep.* 77 (ed. Wright), 447A-448A, and *Ep.* 78. 417D. The author uses the adjective *hieros* with some frequency in connection with Iamblichus (e.g. *ἱερὸν γράμμα* at 417B; cf. Basil, *Ep.* 3).

¹⁵¹ The text calls them the party of Majorinus, who was still alive at this point. Donatus became rival bishop of Carthage in succession to Majorinus later in the year.

¹⁵² Cf. *Coll.* 1. 10 (letter no. 10); the Tymandus letter (no. 45); and the Orcistus letter (*FIRA*² i no. 95, via the vicar).

¹⁵³ Optatus calls them the party of Donatus, not of Majorinus.

¹⁵⁴ Girardet (1989 and 1992) doubts the authenticity of the text quoted by Optatus as well as his chronology, and suggests that the petition followed the Council of Rome. The request for Gallic judges thus led to the Council of Arles in Gaul. For another recent discussion, see Kriegbaum (1990). For a summary account of views on the problem, see Mazzucco (1993: 112-17).

faces the charge made by the Donatists against the Catholics: '*quid christianis cum regibus? aut quid episcopis cum palatio?*' ('what have Christians to do with kings? or bishops with the palace?').

63c. Optatus 1. 23. Constantine's reply to the petition. Summer 313.

Optatus gives a few words from Constantine's reply to the petition. In the fragment, he complains that he is expected to be judge who himself is awaiting Christ's judgement. The Donatist petition did not ask the emperor to act as judge but to appoint judges. Only after the council of Arles did the Donatists appeal to the emperor against its adverse decisions. It is precisely in his letter to the Catholic bishops at Arles in 314 that Constantine uses a very similar phrase. The two passages are so close that it is unlikely that Optatus is here giving a genuine fragment of the original imperial rescript.

64. *CTh* 7. 22. 1. Octavianus (*corrector Lucaniae et Brittiorum*). Given 16 February, at Sirmio (near Verona); received 7 April 313, at Rhegium.¹⁵⁵

This is a letter on the sons of veterans who attempt to avoid military service. It is the first of three *CTh* texts addressed to Octavianus and of seven to a *corrector* of Lucania and Bruttium in the period 313–16.¹⁵⁶ This is a good example of the uneven survival of texts collected into *CTh*, with one Italian province so well represented in this year, and absent from most of the later material. This is also the first of three dual-dated documents in our selection. It is always important to remember that transmission of correspondence could be slow and unpredictable.

Examples of time taken for receipt are as follows:

No. 64: Sirmio to Rhegium, 60 days.

No. 70: Aquileia to Alba, 20 days.¹⁵⁷

No. 73: Trier to Hadrumetum, 165 days.

¹⁵⁵ On the date, see Seeck (*RG* 160) and Delmaire (1992: 317). By altering the year from 319 (when Constantine was at Sirmium) to 313, Seeck was forced to identify the place of issue as Sirmio (in northern Italy near Verona); cf. *CTh* 2. 30. 1 (see edict catalogue, no. 38, and Ch. 11 Sect. ivc no. 5).

¹⁵⁶ See nos. 69, 71, *CTh* 11. 29. 1 + 11. 30. 1 (see date in App. D), *CTh* 9. 19. 1 + 12. 1. 3. These comprise the total for this province for the reign of Constantine (see *fasti* at Barnes, *NE* 164–5).

¹⁵⁷ If *FV* 35 is dated to the same year as *CTh* 3. 1. 2 (337), we have a further period of 176 days between the issue of the letter at Constantinople and its forwarding by the prefect. Note also *FV* 37, where a law was probably issued in Nov. 368 or 369, received by the praetorian prefect in 369, and passed on to a provincial governor in 372.

CTh 8. 10. 1: Trier to Carthage, 99 days.

CTh 11. 29. 1: Trier to Rhegium, 41 days.

Even from these few examples, we can see that the longer journey (in the depth of winter) from Trier to Rhegium could be accomplished more quickly than that from Sirmio to Rhegium (in late winter/early spring), while letters that were sent in winter from Trier took much longer to reach Hadrumetum (not much further down the coast) than Carthage. This might be due either to slow overland transmission on the extra stage of the journey on arrival in Africa (with Carthage serving as port of entry), or to entirely different sailing conditions encountered by ships. Navigation was normally suspended (or at least much reduced) in the winter months, when these letters were issued, so perhaps the slower letter waited for proper sailing conditions.¹⁵⁸

The reasons for delay may have been simply bureaucratic,¹⁵⁹ but can also be related to the time of year, both as to weather conditions (which could affect land as well as sea travel)¹⁶⁰ and as to availability of ships.¹⁶¹

65. *CTh* 10. 8. 1 (*CJ* 10. 10. 2). Aemilius, *vp rationalis*. Given 10 March 313, at Milan.¹⁶²

This letter lays down a definition for a phrase used in imperial *adnotationes* that make grants of property. Letters to financial officials are relatively rare in our material. See also no. 14.

66. Lact. *DMP* 48. 2–12 and Eus. *HE* 10. 5. 2–14 (Silli 1987 no. 4). 'Edict of Milan'. Posted 13 June 313, at Nicomedia.

The so-called edict of Milan is in fact a letter to the governor of

¹⁵⁸ The journey between Gaul and Africa could be made by several routes. The Prices Edict gives a rate for sea freight between Africa and Gaul (*PE* 35. 36), but Constantine ordered the Donatists to travel from Africa to Arles via Mauretania and Spain (Optatus, *App.* III). Presumably, it was also possible to travel overland down the Italian peninsular for a shorter sea crossing from southern Italy or Sicily (Petronius, *Saryricon* 48. 3). For the closed winter season for sailing, see Vegetius, *Epit. Rei Mil.* 4. 39, and *CTh* 13. 9. 3.

¹⁵⁹ A. H. M. Jones (1964: i. 402–3). For lists of dual-dated constitutions, see *ibid.* iii. 91–3 nn. 75–6. For a proposed delay of an extreme nature, see Barnes, *NE* 145 n. 17, where (in order to fit in with the prosopography of the *fasti* for Spain) he suggests that a letter issued at Constantinople in July 332 only reached Seville in Apr. 336. Apart from this, the longest gap is almost a year at *CTh* 15. 7. 13 (414, Ravenna to Carthage)—Jones suggests that it 'went astray in the post'.

¹⁶⁰ Note two identical overland journeys from Sirmium to Corinth in 319, where one took 32 days (*CTh* 2. 4. 1, 4 Feb. to 8 Mar.) and the other 196 days (*CTh* 9. 1. 2, 13 Jan. to 28 July).

¹⁶¹ Duncan-Jones (1990: 17–23).

¹⁶² *CTh* 12. 1. 1 is dated in the MSS to Mar. 313, but is normally attributed to the praetorian prefect Evagrius in the 320s. Thus Seeck, *RG* 176 (326) and *PLRE* i. 284 (Evagrius 2) (329).

Bithynia, posted up on the orders of Licinius after the occupation of Nicomedia, following the flight of the defeated Maximinus. The version of Eusebius, with an additional opening paragraph, is probably from the copy sent to the governor of Palestine and posted at Caesarea later in the year.¹⁶³

Despite the collegiality normally assumed in imperial pronouncements, this is the only document in which two emperors are explicitly designated as behind the measures taken (*tam ego Constantinus Augustus quam etiam ego Licinius Augustus*).¹⁶⁴ Deciding exactly how much of the content represents the view of Constantine as opposed to that of Licinius is not easy. The document grants complete religious toleration, and not only to Christians, as well as the restitution of all confiscated Christian property. In Maximinus' letter to Sabinus, toleration was allowed for Christians, while making it clear that traditional worship of the gods was infinitely preferable. In 324, Constantine allowed pagans freedom of worship, while hoping they would see their error and become Christians.¹⁶⁵ Here, the toleration is even-handed, which may represent the influence of Licinius.¹⁶⁶

The governor is ordered to post the letter above a publishing edict of his own.¹⁶⁷ Those people who lose property in having to restore it to the Christians are told to approach the vicar for some relief (or compensation?).¹⁶⁸

The additional paragraph in Eusebius¹⁶⁹ sits rather awkwardly in front of the more appropriate and emphatic opening statement about the meeting of Constantine and Licinius in Milan. It justifies the letter as necessary to remedy the inadequate enforcement of earlier legislation, probably Galerius' edict of toleration. There are two later references in the letter to previous correspondence sent to the governor, which had laid down policy towards Christians and their property.¹⁷⁰ These former provisions are now set aside. These earlier letters are probably those of Maximinus or his prefect, circumventing Galerius' edict, or even those

¹⁶³ A useful summary of the minor variations is given in the notes to the trans. by Coleman-Norton (1966: 33-5).

¹⁶⁴ Lact. *DMP* 48. 2.

¹⁶⁵ Eus. *VC* 2. 56.

¹⁶⁶ Thus Corsaro (1983: 169); cf. Elliott (1992: 226).

¹⁶⁷ Lact. *DMP* 48. 12. On publication, see Ch. 9 Sect. ii.

¹⁶⁸ Lact. *DMP* 48. 8. The vicar here must be that of Pontica. Eusebius (*HE* 10. 5. 10) uses the phrase 'prefect of the district', presumably his own non-technical translation of *vicarius* rather than a literal translation of the different term in the Latin copy that he was using. Compare the tone to the harsher one adopted by Constantine over restitution in 324 (Eus. *VC* 2. 61).

¹⁶⁹ *HE* 10. 5. 2-3.

¹⁷⁰ Lact. *DMP* 48. 4 (*scriptis ad officium tuum datis*) and 48. 7 (*dati ad officium tuum litteris*).

more recent milder missives, issued in the light of the attitude of Constantine and Licinius.

67. Eus. *HE* 10. 5. 18–20 (Maier 1987 no. 16, Silli 1987 no. 3). Miltiades, bishop of Rome, and Marcus. June 313.

This letter informs the recipients of the forthcoming council in Rome to consider the matter of Caecilian and the Donatists. In the text, the emperor refers to the letters and documents received from Anullinus, proconsul of Africa, and says that he has appended copies of them to his own letter. The recipient Marcus may be the later pope (Kelly 1986: 28–9).

68. *CTh* 11. 3. 1 (*CJ* 4. 47. 2). Antonius Marcellinus, *praeses provinciae Lugdunensis Primaе*. Given 1 July 313, at Agrippina (Cologne).¹⁷¹

This rare surviving example of a letter to a Gallic governor was sent (presumably to Lyons) while Constantine was relatively nearby at Cologne.¹⁷² It forbids the sale of estates without their associated tax liabilities. It is not a rescript prompted by an enquiry from the governor. The emperor states quite clearly that the tightening-up of the tax rules is the result of an imperial investigation into the tax accounts. Such an investigation may of course have been quite local, or even have originated from approaches to the emperor by other officials.

69. *CTh* 1. 16. 1. Rufinus Octavianus, *corrector Lucaniae et Brittiorum*. Given 3 August 313, at Trier.¹⁷³

This letter sets out the judicial competence of the governor.

70. *FV* 35 (*FV* 35. 3–5 = *CTh* 3. 1. 2; cf. *CJ* 4. 47. 2). *Augg. et Caess.* No addressee. *Data Aquileia a praefecto (praetorio) ad correctorem Piceni*, 29 August, *Accepta Alba*, 18 September 313?

This document has caused a great deal of confusion because it is partially preserved in *CTh* 3. 1. 2 as a letter to the prefect Gregorius in 337. It has thus been dated to 337¹⁷⁴ and 342.¹⁷⁵ Other suggestions are that it was issued by Licinius in 313 and adopted later by Constantine,¹⁷⁶

¹⁷¹ For the date, see Seeck, *RG* 161. Marcellinus later became praetorian prefect (*PLRE* i. 548, Marcellinus 16).

¹⁷² Barnes (*NE* 161) only lists four governors from the whole of the Gauls and Viennensis for the period 284–337. Antonius Marcellinus is the only one known from the codes.

¹⁷³ On the date, see Seeck, *RG* 161.

¹⁷⁴ *PLRE* i. 1019 (*Anonymus* 88) and Barnes, *NE* 86 n. 171.

¹⁷⁶ Sargenti (1983).

¹⁷⁵ Seeck, *RG* 191.

or issued by Constantine in the first place in 313 and later reissued by him.¹⁷⁷

The document provides, in the sale of land, that conveyance can no longer be effected at a distance but must be carried out on the land itself, the boundaries being demarcated in the presence of neighbours.¹⁷⁸

The document shows a number of important features. First is the manner of dissemination of an imperial pronouncement, as the text is here sent to the praetorian prefect and then on to a provincial governor (not apparently routed via the vicar).

Second is the style of language. In place of precise and accurate legal terminology there appears the desire for expression in an appropriately grand rhetorical manner. Thus the underlying law is obscured by the decorative language. Indeed, the use of the correct legal term *scamna* for strips of provincial land is considered vulgar or low (*vulgo*) and is replaced by the word *subsellia*, since both share the meaning 'bench'.¹⁷⁹

Imperial self-references are *mansuetudo* and *clementia*. Note also a fine example of rhetorical repetition:

¹⁷⁷ Voss (1982: 168–73) argues for retention of the MS date, which is accepted by Honoré (1989b: 142). Voss's argument is based on four grounds: (1) the inscription *Augg et Caes.* suggests a period with Licinius as joint ruler; (2) the text should be connected with *CTh* 11. 3. 1 and imperial concern for the tax-collection following the recent census; (3) the gap of 29 days for transmission between Cologne (1 July, from *CTh* 11. 3. 1) to Aquileia (29 July) is not too short. This argument is unnecessary, since the date of issue from Aquileia is not 29 July, but a month later, 29 Aug. (as correctly noted by Voss on p. 140); (4) the law was reissued to Gregorius in Italy in 337, which date the *CTh* compilers took once the original date was mutilated after the *damnatio memoriae* of Licinius. I do not find these arguments overly persuasive. The main difficulty to accepting 313 is the presence of the praetorian prefect at Aquileia, where the emperor could not have been. For most of the reign of Constantine, prefects tend to be found with their appropriate Augustus or Caesar. Nor am I happy with the reissue of a text of 313 in 337. It is notable, however, that only two other *FV* texts can be dated after 324 (*FV* 37, 248), so that a date before the fall of Licinius is more immediately plausible. I also prefer to leave the consular date unaltered (as with *FV* 34 and Augustine, *Ep.* 88. 2). In the absence of certainty, therefore, I retain the MS date qualified by a question mark.

¹⁷⁸ Honoré (1989b: 146–8) sees the similar provisions for donations in *FV* 249 (323) as a strengthening of the earlier provisions as given in this text here. This view of course requires *FV* 35 to be the earlier enactment.

¹⁷⁹ *Ibid.* 145–6. The Visigothic breviarist is misled by this usage to take the text as referring to movable objects as well as land (*interpretatio* of *CTh* 3. 1. 2). Note in addition that although the text also discusses the mancipation of Italic land, it manages to do so without employing these terms. For the late Roman love of synonyms, see MacMullen (1962: 369). For other triumphs of style over clarity, see Evans-Grubbs (1993b: 142–7) on *CTh* 9. 1. 1 (326/9), who suggests it was drafted by a non-lawyer influenced by earlier Latin writings, such as comedy, elegy, and satire; cf. *id.* (1989: 68 70, 82–3) on *CTh* 9. 24. 1 (326).

Has fraudes, hos dolos, istas argutias lege prohibemus, constitutione secludimus et idcirco iustae providentiae consulta deliberatione sancimus . . .

These deceits, these tricks, these subtleties we forbid by law, ban by constitution, and therefore with the considered thought of righteous providence we decree that . . .¹⁸⁰

The text ends with a wish for obedience:

Cui legi deinceps cuncti parere debebunt, ut omnia diligenti circumspectione quaesita per universas successiones tuto decurrant neque aliquem ex inprovidentia casum malignae captionis horrescant.

Therefore all should obey this law so that everything obtained after careful inspection should safely descend to all successors and they should not fear some unexpected case of wicked deceit.¹⁸¹

71. *CTh* 16. 2. 2. Octavianus, *corrector Lucaniae et Brittiorum*. Given 2 October 313.¹⁸²

See no. 63.

72. *CTh* 16. 2. 1. No recipient. Given 31 October 313.

See no. 63. Although lacking an addressee, this is clearly a letter since the recipient is addressed as *tua gravitas*. The recipient is sometimes identified as Anullinus, proconsul of Africa, since the troublesome heretics mentioned in the text are thought to be Donatists. This cannot be regarded as certain, but the fact that clerics are described as being nominated to councils contrary to their privileges, does imply that this is reinforcing an existing grant.

73. *CTh* 9. 40. 1 (*CJ* 9. 47. 16), 11. 30. 2 (*CJ* 7. 62. 12), 11. 36. 1. Catullinus (governor of Byzacena). Given 3 November 313, at Trier; received 17 April 314, at Hadrumetum.

These extracts deal with various aspects of the conduct of trials, namely penalties and appeals. It was perhaps not inappropriate that fresh instructions on judicial and administrative matters were being sent out to governors, when Constantine's rule over Italy and Africa was still only one year old.¹⁸³

¹⁸⁰ *FV* 35. 3.

¹⁸¹ *FV* 35. 7; cf. the end of the preamble to the Prices Edict, quoted at the end of Ch. 8 Sect. iii.

¹⁸² On the date, see Seeck, *RG* 161.

¹⁸³ Gaudemet (1981: 49) calls the enactment behind this letter an *edictum generale*, identifying it with edict catalogue no. 39.

IV LETTERS AS RESCRIPTS

How important is the role played by rescripts in our surviving material?

Of the Diocletianic and pre-Constantinian letters, only three represent non-official correspondence, with the emperor responding to petitions (nos. 33, 44, 55). Many, if not most, of the rest are probably rescripts in answer to enquiries from office-holders, though only the following are definitively so: nos. 3, 4, 10, 13, 37, 45, 48, 51.

The identification of rescripts in *CTh* is difficult. As noted in Chapter 1 Section *iiia*, much of the context has been edited out. Thus only the fuller Sirmondian version reveals that a letter addressed to the praetorian prefect Felix in 336 was an iteration of earlier provisions.¹⁸⁴ One famous letter, that is indeed a rescript, is preserved in full as *Sirmondian* 1 but does not survive in the codes at all. This is a constitution on episcopal jurisdiction addressed to Ablabius in 333, in which the emperor expresses surprise at the prefect's asking for clarification on a matter already decided by earlier legislation. Unless the ignorance is feigned as a diplomatic way to raise a delicate question, the prefect here simply does not know of or have access to the earlier law, though he appears to guess that there had already been an enactment on this topic.

Rescripts are thus largely invisible. A text might be a rescript replying to the governor, an unsolicited letter to the governor concerning only him or in some other way geographically limited,¹⁸⁵ or a more widely circulated general law. Even details in a text that refer to a particular province may represent the adaptation of a general pronouncement into a form suitable for each area to which it was sent. A great many letters are addressed to the urban prefect, the senate, or other officials at Rome, and as will be seen in the next chapter, many of the surviving edicts are addressed to the people in Rome.¹⁸⁶ Some writers have taken this as a sign of Constantine's close interest in and concern for the city, which may well be true. It is certainly likely in the case of those texts issued in Rome immediately after its capture from Maxentius. The survival of these texts, however, is a function of the compilation

¹⁸⁴ *Sirm.* 4 plus *CTh* 16. 8. 5 and 16. 9. 1. For text and commentary, see Linder (1987: 138–44). Even the Sirmondian text is not complete (p. 143 n. 9).

¹⁸⁵ For a general survey of the geographic application of Constantinian texts and the problems raised, see Dupont (1967). Note that a geographically circumscribed text could still come within the definition of *generalitas* (J. F. Matthews 1993: 26–9).

¹⁸⁶ More Constantinian texts concern Rome and Italy than any other area. Of texts of known geographical destination, 75 are for Italy, 47 for Africa, and only 24 for the rest of the empire (figures are from Gaudemet 1983: 152).

of the code, whose selection is not representative of Constantine's total output, but may have been distorted by reliance on a handful of specific archives in Rome and elsewhere.¹⁸⁷ Of course, in some cases the matter does concern only the city and Italy, though such texts are not thereby to be seen as rescripts initiated from below. Examples of these specific texts are those concerned with supplying the city, dealing with *navicularii*¹⁸⁸ or pork.¹⁸⁹ On the other hand, even though Constantine addressed the urban prefect as *Maxime karissime ac iucundissime nobis* in his enactment on donations,¹⁹⁰ it does not prove either that this change was only communicated to the urban prefect, or that it was prompted by a letter from the prefect.

Of other texts containing geographical indicators, Constantine's alimentary laws for Italy and Africa, though each is specific in area, give no sign of originating in the initiative of the officials addressed.¹⁹¹ In another case, regulations exempting patrimonial estates from extraordinary *munera* are first established for Africa and only later extended to Italy.¹⁹² Four letters to the proconsul or count of Africa mention proconsuls in the text and a third refers to Africa.¹⁹³ Others may also have a purely or partly African context.¹⁹⁴

¹⁸⁷ This is recognized by Gaudemet (1983: 154), though he still sees Constantine as taking a particular interest in Rome, especially to win over the city in the early years.

¹⁸⁸ *CTh* 13. 5. 1 (to the urban prefect); 13. 5. 2–3 (to the *praefectus annonae*), the first of which actually refers to the city; 13. 5. 4 (to the vicar of the city, see Chastagnol 1960: 32), which refers to ships coming from Spain to the port of the city. Note that one text to the vicar of Rome (not on a matter specific to the city) is recorded in a version posted at Cagliari (*CTh* 2. 8. 1); also a letter to the *rationalis* of Africa posted in the Forum of Trajan at Rome (*CTh* 10. 1. 2). In another text, the governor of Sardinia is told to condemn people to the bakeries in Rome as a punishment (*CTh* 9. 40. 3). One letter to the urban prefect lists those office-holders in Rome, before whom litigants of different ranks should appear (*CTh* 2. 17. 1); cf. the reference to 'auxilium praetoris' (*CTh* 2. 19. 1).

¹⁸⁹ *CTh* 14. 4. 1–2.

¹⁹⁰ *FV* 249. 1. Contrast another letter to the urban prefect on the subject of the quaestorship, which was prompted by senatorial lobbying: *Religiosis vocibus senatus amplissimi persuasi decernimus*... (*CTh* 6. 4. 1).

¹⁹¹ *CTh* 11. 27. 1–2.

¹⁹² *CTh* 11. 16. 1–2. The second text quite specifically refers to Italy and Africa.

¹⁹³ *CTh* 1. 12. 2–3, 8. 5. 4, 11. 27. 2 (*proconsules*); 9. 34. 2 (Africa).

¹⁹⁴ For a survey of the African constitutions of Constantine, discussing both those which are purely 'African' as well as those which are simply local applications of general measures, see Gaudemet (1992). The *Tertii Augustani* mentioned in a letter to Africa are otherwise unknown but could be specific to Africa, although the extract begins with the expression *universi provinciales* (*CTh* 4. 13. 3). In a letter to the proconsul of Africa (*CTh* 8. 12. 2), the use of the words *stipendiarium fundum* cannot be taken as a terminologically exact reference to the status of land in the proconsular province, according to the definition of Gaius, which apparently differentiated between senatorial and imperial provinces. As already mentioned in Ch. 5 Sect. iiib, the Gaius passage should be disregarded and the terms *stipendiarius* and *tributarius* taken as interchangeable. Thus in

There are of course some clear examples of rescripts. In 320, Constantine wrote to the urban prefect allowing the consultation of soothsayers after lightning strikes on the palace or public buildings. The letter ends:

Eam autem denuntiationem adque interpretationem quae de tactu amphitheatri scripta est, de qua ad Heraclianum tribunum et mag(istru)m officiorum scribseras, ad nos scias esse perlatam.

Know that we have received the report and interpretation written about the lightning strike on the amphitheatre, about which you wrote to Heraclianus tribune and master of offices.¹⁹⁵

Clearly this letter is a response giving general guidance after the prefect reported on the specific problem over the lightning strike on the amphitheatre. The impression given in the letter is that the prefect did not write directly to the emperor, but simply submitted his report to the *magister officiorum*.¹⁹⁶ This may however show that much of the correspondence addressed to the emperor passed first through the hands of the *magister*.¹⁹⁷ Very similar is a letter to an unidentified Spanish governor, on the sale of slaves left as pledges for unpaid taxes, which describes information sent by the previous governor to Proculeianus, tribune and master of offices.¹⁹⁸ Another presumptive rescript opens with the phrase *quoniam dubitasti*, and seeks to clarify the doubts of the recipient as to whether a two-month period should be taken to mean two calendar months.¹⁹⁹ A fragmentary epigraphic text to Catullinus, proconsul of Africa, is also clearly a rescript, containing the words *litteris ad nos dat[is]*, although the full context cannot be reconstructed.²⁰⁰

this text, the phrase *Italicum sive stipendiarium fundum* simply means land either in Italy or the provinces. The letter was thus suitable for any province (Simon 1977: 51 takes this text as a general law, not specific to Africa).

¹⁹⁵ CTh 16. 10. 1.

¹⁹⁶ Thus, Barnes (CE 52) presumes that the prefect writes to the *magister*, the *magister* contacts the emperor, and the emperor then writes back to the prefect.

¹⁹⁷ Thus Clauss (1980: 11), who presumes that, since the *magister* here appears superior to the *magister epistularum* in controlling correspondence with governors, he was also already set over the other *scrinia* as well. The additional military-style title *tribunus* reflects the fact that palatine service is usually described as *militia*. This passage is the earliest attestation for the post of *magister officiorum*, which cannot have been created many years before (ibid. 7, 12-13: it must post-date Diocletian's Persian victory in 298).

¹⁹⁸ CTh 11. 9. 1 (posted at Castulo, therefore to the governor of Carthaginiensis): *Quoniam decessoris tui litterae missae ad Proculeianum tribunum et magistrum officiorum continent.*

¹⁹⁹ CTh 12. 1. 2. The recipient Crispinus is otherwise unknown and the date may be 315, 320, or 353 (Barnes, NE 174).

²⁰⁰ ILAfr 269.

In another case, however, a letter to the count of Africa opens with the phrase *certis nuntiis conpertum est*, so that the information that prompted the imperial communication did not come from the count.²⁰¹

Two texts, neither from *CTh*, relate to specific court cases with named participants. These are a letter of Constantine to the urban prefect, Septimius Bassus,²⁰² and a letter of Licinius to Titianus, governor of Cappadocia.²⁰³ These must both be rescripts. But even the naming of individuals need not always denote a rescript. A reference to the son of Licinianus is added on at the end of a letter to the praetorian prefect Gregorius. Clearly the emperor must have been informed of the flight of the man in question,²⁰⁴ but his response to the matter is embedded in a longer, more general letter on problems of status arising from illegitimacy.²⁰⁵

It has been suggested that a letter to Pacatian, vicar of the Britains, arose from an aspect of Celtic custom and so must represent the consultation of the emperor about a specific local case.²⁰⁶ This may be correct. However, though such a genesis may be proposed for many letters, in the absence of explicit evidence in the text, most such identifications must be guesses.

Some texts are not to imperial officials, and are more likely to be genuine rescripts. Thus the letter to the decurions of Cologne on the curial liabilities of Jews, although referring to a *generalis lex* for all

²⁰¹ *CTh* 8. 5. 4; cf. *CTh* 11. 27. 2: *Provinciales . . . liberos suos vendere vel obpignurare cognovimus*. There is no indication here of the emperor's source of information; contrast letter no. 68, resulting from an imperial investigation.

²⁰² *FV* 36. The named parties are Valentinus and Exuperantius.

²⁰³ *CJ* 7. 16. 41. The status of one Aelius is at stake in this text.

²⁰⁴ Such information may have come from Gregorius anyway, but this cannot be demonstrated. No doubt it could also have originated from the *rationalis* or proconsul of Africa.

²⁰⁵ *CTh* 4. 6. 3. The previous constitution (4. 6. 2) also mentions the son of Licinianus, though only the end of this text is preserved. In it, the reference to the son of Licinianus opens as follows: *Itaque Liciniam etiam filio . . . omnis substantia auferatur et secundum hanc legem fisco adiudicetur*. This also looks like a more general law enacted and applied to a specific case. However, it might still be a rescript. On this text, see also Ch. 11 Sect. ivc.

²⁰⁶ *CTh* 11. 7. 2 (319). This is the sole British text in *CTh*. See Stevens (1947). Few documents from Britain survive to show the application of Roman civil law there. Note e.g. two wooden tablets, a 3rd-cent. land contract (*The Roman Inscriptions of Britain*, ii/4, no. 2443. 13), and a 2nd-cent. land ownership dispute (ibid. no. 2443. 19, now more fully at Hassall and Tomlin 1994: 302–4, no. 34). Some other British texts survive in the juristic sources: e.g. *D* 28. 6. 2. 4 (Iavolenus Priscus as *irudicus* of Britain) and 36. 1. 48 (addressed to Virius Lupus as governor of Britain), *CJ* 3. 32. 1 (Severus at York). For these and other possible examples, see Birley (1953: 48–52).

ordines, may have been issued in response to a petition or embassy on the matter from that city, and be providing clarification or reiteration of the law.²⁰⁷ Inscriptions preserve other 'civic' rescripts in response to petitions.²⁰⁸

Two legal texts are to bishops, both on the subject of manumission in church. Constantine issued three texts in all on this topic.²⁰⁹ The first is lost, the second is addressed to Protogenes, bishop of Serdica, in 316,²¹⁰ and the third to Hosius of Cordoba in 321.²¹¹ Both these may well be rescripts in reply to enquiries on this matter.²¹² In the first case, the emperor was probably in the bishop's city of Serdica at the time, so that an approach to the emperor by the local bishop was logical, arising from the bishop's immediate concern for his own area, which had only recently come under the rule of Constantine from that of Licinius. Hosius was a courtier with constant access to the emperor. There is no evidence in our period for the later system of *suggestiones*, whereby an official submitted a document to the emperor making a suggestion for legislation, which document subsequently came to form the basis of an imperial law. But Hosius' position makes it possible that the letter to him at least came from such a suggestion. It would hardly have arisen from problems arising from his own see at Cordoba (which he may have seldom visited).²¹³ Rather it could reflect his supposed influence on Constantine's policy in general.²¹⁴ Both these texts, therefore, show imperial letters responding to initiatives from below.

Rescripts are best represented in material on a specific limited topic and not on matters of general law—namely, the Donatist controversy. Such texts do not survive for the most part in the codes, but in the Christian literary sources, which had an interest in preserving them. Here we can perceive more clearly patterns of action and reaction.

The Donatist problem, from the point of view of imperial documents, started with the letter to Constantine from Anullinus, proconsul of Africa (letter 63a). This was itself a reply to an earlier letter from the emperor

²⁰⁷ *CTh* 16. 8. 3. This text is discussed by Linder (1987: 120–4), who does not see this as a rescript.

²⁰⁸ *FIRA*² i no. 95 (Orcistus) and *ILS* 705 (Hispellum). This second is headed by the letters *E S R*, i.e. *exemplum sacri rescripti*.

²⁰⁹ Sozomen, *HE* 1. 9. 6. On this see Harnes (1986: 48, 52 n. 7).

²¹⁰ *CJ* 1. 13. 1. On difficulties of dating, see App. D. ²¹¹ *CTh* 4. 7. 1.

²¹² Thus Millar (1977: 591).

²¹³ Lane Fox (1986: 664) dates the council of Elvira (at which Hosius was present) after 312, considering it perfectly possible that Hosius could have been temporarily absent from the court to go to Spain during the period 312–24.

²¹⁴ Against the view of Hosius as a 'religious adviser', see Warmington (1989).

and reported the governor's reception of that letter and its communication to Caecilian. With his letter, Anullinus also enclosed *libelli* from the Donatists to the emperor, one of which appealed for his intervention, asking for the appointment of judges from Gaul.²¹⁵ It was this appeal that was the catalyst for the whole chain of imperial documents that we possess, documents that attest the continuing fruitless attempts to solve the problem. The petition may have produced an imperial rescript (no. 63c) and arrangements were made for a council in Rome, with some participating bishops from Gaul (October 313).²¹⁶ The outcome of this was unfavourable to the Donatists, for whom this was not a satisfactory solution. It was from letters of Aelafius, vicar of Africa, that the emperor discovered that the controversy was still alive. He wrote back to the vicar: *dic[t]ationis tuae scripta legissem, quae ad Nicasium et ceteros super hisdem simul<t>ationibus gravitas tua mittenda crediderat* ('I have read the letter of Your Devotion, which Your Gravity thought should be sent to Nicasius and others on these same disputes').²¹⁷ The result was a second council, this time in Arles (August 314). Again the Donatists were not happy with an adverse result and they appealed to the emperor. The next stage was a further examination and exculpation of Felix of Apthungi, consecrator of Caecilian as bishop of Carthage, who had been accused of being a *traditor*. This took place in February 315, before the proconsul of Africa, standing in for the vicar, who was ill.²¹⁸ The emperor wrote on the matter to the proconsul's successor, having read the record of the proceedings.²¹⁹ He wrote to the new vicar Celsus, sending a letter in direct response to the vicar's latest dispatches.²²⁰ It is clear from these examples how the emperor's correspondence responded to and generated further communications. The imperial involvement, however,

²¹⁵ Constantine's letter to Aelafius (Optatus, *App.* III) opens with a description of the dissension in Africa being brought to his attention (*ad scientiam meam*).

²¹⁶ Optatus 1. 23 describes Constantine's supposed reaction to the petition: *Quibus lectis Constantinus pleno livore respondit*.

²¹⁷ It is not entirely clear who Nicasius was and how he fitted into the pattern of correspondence. Mandouze (1982: 780, Nicasius 1) includes him in his African prosopography, but makes no specific suggestions, beyond denying identification with Ulpian Nicasius (*PLRE* i. 628). Coleman Norton (1966: 57 n. 13) suggests that he was an imperial notary concerned with African matters, though no notary of that name is included in the prosopographical list of Tentler (1985). Nicasius is perhaps to be identified with a deacon at the Council of Arles and a bishop at the Council of Nicaea (Pauly-Wissowa, *Real-Encyclopädie*, xvii. 171, Nicasius nos. 3 and 5). Alternatively, he might even have been *tribunus et magister officiorum*, as in the two examples discussed above. If so, who might be the *ceteri* to whom Aelafius had also written?

²¹⁸ Optatus, *App.* II.

²¹⁹ Augustine, *Ep.* 88. 4.

²²⁰ Optatus, *App.* VII.

only became direct when the emperor responded to the original Donatist appeal.

The attempts to solve the problem foundered and even strong-arm tactics had to be abandoned in the face of the Donatists' firm stand.²²¹ In one of the later Constantinian texts on this matter, we find the emperor responding to letters from the Catholic bishops of Numidia, which informed him of the seizure of a church and its continued occupation by the Donatists in despite of imperial and gubernatorial protests.²²² The emperor's rescript to the bishops is not the only document he produces on this matter. He tells the bishops that he has written to both the *rationalis* and the *consularis* of Numidia on the matter and on the question of immunities for Catholic clergy.²²³

These Donatist documents are the exception in our material. They represent the emperor dealing with a single specific problem, affecting a single diocese and a small number of identifiable individuals. The emperor is shown reacting and responding to events (and correspondence). Such a pattern, however, should not be considered unique to the problem of the schism. As already shown, there are both undoubted and probable Constantinian rescripts in the codes. I think it fair to suggest that the extent of the stimulation of imperial pronouncements from below would appear much greater, if we possessed the full text and context of the various letters. Constantine's attempts to limit the number of matters referred to his attention would make little sense if he was not troubled by the large volume of enquiries from officials that required rescripts.²²⁴

²²¹ For the change in policy, see Augustine, *Don. Post Gesta* 31. 54, 33. 56, and *Brev. Coll.* 3. 22. 40; Optatus, *App.* VIII.

²²² The part of the letter to the *consularis* of Numidia that deals with the immunities of lesser Catholic clergy survives as *CTh* 16. 2. 7. Both this and the letter to the bishops are dated 5 Feb. 330 at Serdica.

²²⁴ See *CTh* 11. 29. 1 (*super paucis... nostram debes consulere maiestatem, ne occupationes nostras interrumpas*) and 15. 1. 2 (*de rebus autem praecipuis maximisque, non de quibuscumque vilissimis nostrum debet interpellare consilium*); cf. *CTh* 1. 15. 1 for governors overwhelmed by a mass of rescripts. Note also that the Council of Antioch of 327 (*Concilium Antiochenum*, canons 11–12, ed. Mansi, ii. 1313–14) tried to prevent clergy, who 'wearied the ears of the emperor', from visiting court without the permission of their metropolitan.

Imperial Edicts

I INTRODUCTION

This chapter sets out a *catalogue raisonné*, containing all known imperial edicts for the period 284–324. It includes:

- (a) edicts whose texts are preserved, in part or in whole;
- (b) non-edictal texts that refer to edicts;
- (c) texts of or references to the edicts of prefects and governors, where these are closely connected to imperial enactments.¹

I have not included all references to imperial commands in papyri, but only a few notable examples from the Beatty Panopolis and Isidore collections. Even so, it is not entirely certain that papyrus references to *θεῖον πρόσταγμα* or similar phrases need denote an imperial edict. The adjective *hieros*, which is normally associated with matters imperial, can refer to acts of the prefect of Egypt.² It is possible that *θεῖον* could be used in a similar manner. Thus any government action, even if emanating in practice from the prefect, might be seen as imperial. In any case, a list of all the census and property declarations that are described as made in accordance with imperial provisions would be of greater length than use, and I have not attempted such a catalogue.

Because of its great length and complexity, the Prices Edict is discussed separately in the next chapter, although it is given a short entry at the appropriate place in the catalogue as well.

The usual edictal format is a pronouncement headed by the emperors'

¹ In addition to the prefectural edicts in the catalogue, there are the following three edicts of prefects of Egypt, apparently unconnected to imperial enactments (see Katzoff 1980: 818–19): *P. Oxy.* 888 (Aug./Oct. 287), Valerius Pompeianus on the appointment of guardians; *P. Oxy.* 2704 (Feb. 292), Titius Honoratus preventing the spoiling of crops by wandering animals; *P. Oxy.* 3303 (300/1), Claudius Cleopatrus on boat supply. Note that *P. Oxy.* 1186, an edict of the *praeses* of the Thebaid, is of uncertain 4th-cent. date: first half of the 4th century in the original publication, but c.385 in *PLRE* i. 426 (Herodes 3).

² Katzoff (1986: 122 n. 14).

names and *dicunt* (or λέγουσιν in Greek), but without any named recipient.³ However, edicts could be addressed to particular provinces or areas. Thus headings in the Theodosian Code *ad populum* are counted as edicts addressed to the people of Rome,⁴ and similar headings are addressed to provincials (e.g. *ad universos provinciales*, *ad Lusitanos*, or *ad Bithynos*). Some of the items included in the catalogue have mysterious headings (e.g. *ad edictum*), about whose interpretation there is no clear consensus, and they may not be edicts at all.⁵ In many cases, the format of fragmentary or acephalous texts is uncertain, but in the absence of positive evidence that these texts are *epistulae* I have included them in the edict catalogue.

As will be clear from examples in the catalogue, the technically correct Greek translation of *edictum* is διατάγμα.

II THE REIGN OF DIOCLETIAN (284-305)

I. The following four extracts may all form part of a single longer edict on judicial procedure.⁶

1a. *CJ* 3. 11. 1. Given 18 March 294.

Impm Diocletianus et Maximianus AA et CC dicunt.

The inscription shows this to be an edict. The subject is *de dilationibus*. Judges are guided as to appropriate periods to allow for gathering people and documents: three months from the same province, six from a neighbouring province, and nine from overseas.⁷ The change of perspective between the late third century and the earlier empire is well illustrated by the geographical assumptions underlying the time-limits. An earlier edict, variously dated to the first or third centuries, gives

³ For edicts and edict format in general, see Benner (1975: 25-30); also van der Wal (1981: 283).

⁴ Note that a great many of these edicts are in fact published in Rome. For a late occurrence of the phrase *edictum ad populum* (which does not actually occur in our material), see *CTh* 11. 28. 9 (414). On the whole question of these edicts, see Dupont (1971c).

⁵ On which see Gaudemet (1979: 32-3). Apart from supposing that they simply denote edicts, suggestions include: (a) they may be imperial pronouncements commenting on existing edicts (as in the juristic commentaries *ad edictum* on the praetorian edict); (b) they may be imperial replies to the decrees of cities; (c) the *ad* may even indicate the loss of a recipient's name.

⁶ These are all taken as part of one edict by Fernández Barreiro (1987).

⁷ Other contemporary texts concerned with legal time-limits are *CTh* 2. 6. 1, 2. 16. 2, 11. 9. 1, 11. 30. 10, 11. 35. 1.

time-limits for Italy, transalpine provinces, and transmarine provinces.⁸ Diocletian's perspective is no longer Italocentric.⁹

1b. *CJ* 3. 3. 2. Given 18 July 294.

Impp Diocletianus et Maximianus AA et CC dicunt.

This text occurs under the title *de Pedaneis Iudicibus*, and attempts to tighten up procedures for the governor in delegating cases. In particular, questions of free and freed status are reserved for the governor alone. The dating of this and the previous extract may be harmonized, by the emendation of the month in either case (the *Apr* and *Aug* of the Roman dates can easily be confused).

1c. *CJ* 7. 53. 8. *Sine die et consule* (between 293 and 305).

idem (Impp Diocletianus et Maximianus) AA et CC.

This is a short text on the execution of judgements.

1d. *CJ* 7. 62. 6. *Sine die et consule* (between 293 and 305).

idem (Impp Diocletianus et Maximianus) AA et CC dicunt.

This edict is the longest Diocletianic text in *CJ*. The subject is *de Appellationibus*. Though containing some lengthy sentences, the style is not ornate and keeps to its subject without deviation or repetition. Any rhetorical preface has been excluded by the compilers.

Note the use in the *principium* of the phrase *salubritas legis*, an idea which recurs in our material.¹⁰ Section 4 has been used to demonstrate restriction of appeals under the late empire, as a limiting of the access of the citizen to justice (and to the more remote emperor).¹¹ I think that this is an incorrect interpretation. Rather, the passage seeks to prevent frivolous appeals from those with a poor legal case, as a reading of the wider context shows:

ne temere autem ac passim provocandi omnibus facultas praeberetur, arbitratorem, qui malam litem fuerit persecutus, mediocriter poenam a competenti iudice sustinere.

⁸ *FIRA*² i no. 91 (placing it after a rescript of Gordian III) and Bruns⁷ no. 78 (placing it after an edict of Augustus).

⁹ Note that, for those wanting remedies for actions during their minorities, Constantine sets the age-limits within which they have to bring their case, with different ages for Rome, Italy, and then the provinces. This is, however, in a letter to the urban prefect (*CTh* 2. 16. 2).

¹⁰ *Salubriter* occurs at *CJ* 7. 43. 9, 9. 2. 11, 10. 1. 4, 11. 42. 1 (Honoré, *EL*² 155 n. 144, therefore a poss. indication of authorship by Gregorius as *magister memoriae*?), and *salubri... ratione* in the 'edict of Milan' (Lact. *DMP* 48. 3; cf. *Sirm.* 1); possibly also in a fragment of the Currency Decree (Roueché 1989: 262, frag. p, which may now read *salubri...*). Albertario (1929) needlessly regards the code texts as interpolated.

¹¹ e.g. MacMullen (1976: 76).

Lest the right of appeal be allowed unthinkingly to all everywhere, we consider that he who pursues a bad case should receive a moderate penalty from the competent judge.

It must be remembered that penalties for *calumnia* already awaited failed delators in criminal cases.¹²

2. *CJ* 3. 29. 8. 11 September 294.

This text is a private rescript, but it contains a reference to an imperial edict of Diocletian of unknown date: *lex quam patrimonio matris ediximus*.

3. *Coll.* 6. 4 (*CJ* 5. 4. 17). Given at Damascus, 1 May 295.

Exemplum Edicti Diocletiani et Maximiani nobilissimorum Caesarum.¹³

This text, attributed to Book 5 of the Gregorian Code under the heading *de nuptiis*, refers to itself as an edict; twice with the phrase *hoc edicto nostro* and once with *edictum nostrum*. The issuing emperor is either Diocletian or Galerius.¹⁴

This is one of the key texts for the *romanitas* of Diocletian's government,¹⁵ associated with other texts such as the Manichees letter, and of course with the Christian persecution.¹⁶ The banning of incest as alien to Roman religion and law, and as a monstrosity appropriate to beasts and barbarians, coincided with preparations for the war against Persia, a land traditionally associated with incest.¹⁷ The attitude and ideas are

¹² Delation was both encouraged and suppressed. See nos. 31, 32, and 35 below and *CTh* 9. 16. 1. Note also punishment for those who incorrectly challenge a verdict (*CTh* 1. 5. 3).

¹³ The heading should be reconstructed to give the first tetrarchy. The copyist of the Berlin MS has missed a complete line by jumping from Maximian the Augustus to Maximian the Caesar. This can be clearly seen in the photograph in Hyamson (1913: 20), lines 9–10.

¹⁴ See below, Ch. 11 Sect. iia. Some people have suggested, since the word *Maia* is in the accusative, that a number has dropped out before the *Kal.* and that the date should be a few days earlier, in late Apr. This would further reduce the time for Diocletian to travel from Nicomedia (18 Mar., *CJ* 5. 72. 3) to Damascus, and thus makes Galerius more likely to be the issuer of this law.

¹⁵ Honoré argues (*EL*² 154–5) that this edict was composed by his *magister libellorum* no. 17/18 (Gregorius) as *magister memoriae* (cf. Liebs 1987: 35; more cautious is Peachin 1989: 176 n. 26). Other key constitutions for *Romanitas* are assigned to his tenure of the *libelli* (*EL*² 149 nn. 52–4): *CJ* 5. 5. 2 (bigamy), 6. 24. 7 (fraternal adoption), 8. 46. 6 (*apoceryxis*).

¹⁶ See *Coll.* 15. 3 = letter no. 37 (Manichees) and Galerius' recantation (edict no. 26). Also on incest, see *Coll.* 6. 5–6 = letter no. 2.

¹⁷ For Persian incest, see e.g. Euripides, *Andromache* 173–6 and *Dissoi Logoi* 2. 15 (ed. Diels–Kranz, *Die Fragmente der Vorsokratiker*, 6th edn. (1952), ii. 408); cf. general sexual vice at Sextus Empiricus, *Pyrr. Hyp.* 1. 14. 152 and Ammianus 23. 6. 76.

not dissimilar to those of the letter on the Manichees.¹⁸ We would be unable to deduce the style of the edict as a whole, if we possessed only the brief and bald extract in *CJ*. In the complete text, the language is rich in words of piety towards the gods and moral outrage, as well as a stress on *vetus ius*. The imperial qualities mentioned are appropriately *pietas* and *clementia*,¹⁹ as the emperors seek to restore proper morality, while granting pardon for past misconduct.²⁰ *Disciplina*, which occurs also in the private rescripts as *disciplina iuris* or *legum*, is used here for both past and present as *disciplina nostrorum temporum* and *disciplina iuris veteris*.²¹

A period of eight months, until 30 December 295, is given for compliance with the edict's provisions. It is not clear whether this is also an allowance for the dissemination of the edict around the empire. Since it was issued from Damascus, the edict may be of particular relevance to the surrounding area. Constantius II also sent an edict on incest to Phoenicia,²² a text that is important as decreeing punishment for marriage to a brother's daughter, which is not mentioned in our edict.²³ It is notable, however, that *CJ* does not include Constantius' law, but adds the words *praeterea fratris filia et ex ea nepte* to the list of forbidden affinities, which is all that it preserves of the complete Damascus edict. This alteration is probably to be attributed to Justinian's commission.

4. *P. Cairo Isid.* 1. 16 March 297.

Ἀρίστιος Ὁ(π)ᾶτος ὁ διασημότη(α)τος ἑπαρχος Αἰγύπτου [λέ]γει.

This text is not itself an imperial edict, but an edict of the prefect of Egypt promulgating an imperial edict on new methods of tax assessment, a reform which may well have contributed to the revolt of Domitius Domitianus in 297–8.

¹⁸ The connection is emphasized by Chadwick (1979).

¹⁹ Cf. *clementia principum* with regard to incest at *Coll.* 6. 5.

²⁰ In the very first line the emperors talk of *piis religiosisque mentibus nostris*. Note also a single use of *providendum* (sect. 2).

²¹ Sect. 1 and 2; note also *disciplina legesque Romanas* and *venia quae per clementiam nostram contra disciplina videtur indulta* (sect. 4 and 7). For *disciplina* in private rescripts, see *CJ* 5. 4. 12, 4. 6. 8, 4. 32. 22, all Diocletianic (see Honoré, *EL*² 149–50, 169, contrasting the *legum disciplina* of Gregorius and the *iuris disciplina* of Hermogenian). Note also its occurrence in Galerius' edict of toleration (edict no. 26).

²² *CTh* 3. 12. 1 (342). For continued incest in parts of the east, see Clark (1993: 43–4).

²³ Marriage to a brother's daughter was legalized to allow Claudius to marry Agrippina (Tacitus, *Ann.* 12. 5–7; Suetonius, *Divus Claudius* 26. 3). Nerva is said to have recriminalized it (Dio 68. 2. 4), but it does not appear forbidden at Gaius, *Institutiones* 1. 62.

The prefect refers to both his own and the emperors' edicts as *διατάγματα*, the normal Greek equivalent for edict. The prefectural edict was posted beneath the imperial copy, which was also accompanied by a schedule (*breviarium*) of liabilities.²⁴ The edict enjoins willing obedience upon the population in response to the imperial benevolence, and the posting of the two edicts and *breviarium* is urged upon the local municipal officials. Thus the papyrus itself comes to be preserved in the records of a village official.²⁵

The text emphasizes the *πρόνοια* of the emperors and their concern for their provincials, both being standard *topoi*.

P. Cairo Isid. 2 (December 298) and 3–5 (September 299) are declarations of olive-trees and presumably refer to this law when they state they are acting *ἀκολουθῶς θεῶ προστάγματι τῶν δεσποτῶν ἡμῶν... καὶ... τῶν ἐπιφανεστάτων Kaisάρων*. *P. Beatty Panop.* 2. 145–52 (13 Feb. 300), a letter of Aurelius Isidorus, the procurator of the lower Thebaid to the strategus, gives a second chance to those who have failed to declare their vineyards for assessment in accordance with the *θετὸν πρ[όσταγμα]*, which is perhaps this edict.

5. *Leges Saeculares* 121 (*FIRA*² ii. 795–6 and Millar 1993: 194); the boundary inscriptions of the *censitores* (listed, with some texts reproduced in full, by Millar 1993: 535–44). c.296/7.

These documents reflect Diocletian's tax reorganization in Syria, and should have originated from the same underlying imperial decree as did the edict of Aristius Optatus above, or at least from a similar decree.

The text from the Syro-Roman Law Book describes how different types of land were measured according to the *iugum* as fixed under Diocletian.

Over thirty inscriptions, all in Greek, survive which attest to the activities of land-surveyors or *censitores* fixing boundaries of villages in the Syrian provinces, as far south as Arabia. Most can only be dated to the period of the first tetrarchy (293–305), but those more closely dated are from 296/7. A typical example is as follows:

Diocletian and Maximian Augusti and Constantius and Maximian Caesars ordered this stone to be set up marking the boundary of the village of Mezze and of Pamoioi under the supervision of Aelius Statutus *perfectissimus*. (*SEG* 7. 248 = *AE* 1933. 145 = Millar 1993: 539, no. 16)

²⁴ Cf. the Prices Edict tariff-list and Cassiodorus, *Variae* 11. 11.

²⁵ See comments of Hopkins (1991: 156–7).

A slightly different format reads:

For the safety and victory of our lords Diocletian and Maximian the Augusti and Constantius and Maximianus most noble Caesars. The boundaries of the village of Kaproliaboi (Kafr Lab) were established under the distinguished *censitor* Iulius Sabinus, Year 345 Panemos 8 (= AD 297). (SEG 20. 337 = Millar 1993: 537, no. 4)

The activities of the *censitores* (and their registers) are also reflected in Egyptian material, as for instance at *P. Beatty Panop.* 2. 86–91, 131, 142, 146. However, the exact connection between the tax reform and the surveys in Syria is not entirely clear, since village boundaries not personal land-holdings are being delineated. This may, however, reflect the responsibility of the village unit for the tax in its area (Millar 1993: 193–6).

The texts suggest that the inscriptions were put up by the *censitores* themselves, rather than on the initiative of the villages being surveyed. This surveying process provides good evidence for a tetrarchic measure being carried out effectively at a local level and shows the administrative system working at its detailed best.*

6. *P. Beatty Panop.* 2. 229–242. 27 January 300.

This is a letter of Aurelius Isidorus, procurator of the Lower Thebaid. It refers once to a *θελου νόμου* and twice to *θελα διατύπωσης*. This may refer to some edict on tax, perhaps even no. 4 above. The letter seeks to prevent extortion by tax-collectors or collusion with them by some strategi.

7. *P. Beatty Panop.* 2. 52. 29 January 300.

This *θεῖον προσταγμα*], mentioned in a letter of Aurelius Isidorus, concerns the payment of official moneys into a bank account. It need not be an imperial as opposed to prefectural measure.

8. *P. Beatty Panop.* 2. 216. February 300.

This letter concerns an ordinance of the catholicus regarding state purchase of gold, *κατὰ τὸν δοθέντα θεῖον ὅρον ὑπὸ τῶν δεσποτῶν καὶ βασιλέων ἡμῶν καὶ τῶν ἐπιφανεστάτων Καισάρων*. This ordinance may well have been an edict. Compare with letter no. 50.

9. *P. Beatty Panop.* 2. 93. February 300.

This is a proclamation of Aurelius Isidorus, referring to an ordinance of the catholicus made in accordance with an imperial decree (similar

to no. 8 above). The subject is *ballantia* offered to bankers, and appears to concern some sort of fraud in the use of sealed bags (*folles*) of coins.

10. Aphrodisias Currency Inscription (see also letter catalogue, 36). Before 1 September 301. Original publication in Erim *et al.* (1971), updated by J. Reynolds in Roueché (1989), 254–65. New unpublished fragments were made public at a seminar in the British Museum on 7 June 1991.

The exact nature of the documents in this inscription is unclear, but there seems to be an edict prefaced by the full imperial titles, followed by either a second edict and then a letter, or just a letter.

The first document is almost certainly an edict although the edictal *dicunt* has not survived after the long imperial titulature. It refers to *bicharacta pecunia* and four *denarii*. This appears to refer to the retariffing of the radiate *nummus*, though the phrase *bicharactam redd[ere]* implies an exchange of old for new coins. There is also a suggestive reference to the *rationalis*, which might be in connection with this exchange. However, it might also be possible to restore the phrase along the following lines: *ad [r]ationa[l]em et u[?] litte[r]as datas esse*. . . . Since the final part of the dossier is almost certainly a letter, perhaps this is a reference to it, so that the unidentified recipient should be the *rationalis*. As already mentioned under the letter, catalogue no. 36, the second document opens in the manner of a law-code entry with the phrase *Idem impp Augg vacat*. There is no further indication of the form of this document. Whereas the first document speaks of four *denarii*, the second talks of twenty-five *denarii*. The letter refers to twenty-five *denarii*, and the *argenteus* at one hundred *denarii*.

How many documents are here? As preserved, there is only one indication of a change between documents. We appear to possess one block of stone almost entirely (the main text of the letter), with enough fragments to constitute a second block above it. If, therefore, we wished to suppose that there were two or even three edicts, one for each coin denomination plus a comprehensive letter on the whole matter to the *rationalis*, an entire block would be required, a block of which no trace has survived.²⁶ On present evidence, therefore, with only the two blocks, there appear to survive an edict on the *bicharacta pecunia* (tariffed at

²⁶ At the seminar on 7 June 1991, Prof. Crawford expressed his view that we possess fragments of the entire inscription and that there is no missing third block (see also Roueché 1989: 263).

four *denarii*) and a letter on the other coins, which may be a letter to the *rationalis* mentioned in the edict.

The existence of separate documents suggests that not all the coins were treated in the same fashion, and therefore that not all were doubled in value. Note the provision that pre-reform debts were to be paid according to pre-reform face values. This may have protected private creditors, but the claims of the fisc were the primary concern here.

There are some further odd features in the first edict. It refers to the provinces and Rome (although perhaps not in a single phrase, since they are separated on adjacent lines of the inscription), implying that the measure is empire-wide and includes the west²⁷ (as such a retariffing would need to do in order to be effective). This also mirrors a papyrus reference in connection with the Prices Edict which refers to the provinces and Rome.²⁸ Rome is not mentioned in the preamble to the Prices Edict, and the papyrus reference may be to the present enactment.

More mysterious is the expression *in maiore orbis parte*, which occurs in each of the documents on the inscription. This appears to be unparalleled. While documents may either be general or refer to specific areas, such an imprecise phrase seems illogical, at least in an administrative sense. It is unlikely that it implies a situation in which some parts of the empire had different coinage. Britain had been reconquered in 296 and the separate Alexandrian coinage had disappeared after the reform of 294. Therefore, the current coinage should have been universal. The use might instead be rhetorical; e.g. 'we are taking this action, because inflation afflicts the greater part of the world'. Of course, the full context in which this occurs cannot be reconstructed from the fragments of either document. For the moment, the interpretation remains uncertain.

II. Prices Edict. Between 20 November and 9 December, 301.²⁹

The fullest text is given in Giaccherio (1974: i), now supplemented by the Aezani fragments in Crawford and Reynolds (1977 and 1979) and the Aphrodisias fragments by J. Reynolds in Roueché (1989), 265–318.³⁰

²⁷ Since the provincialization of Italy, Rome was the only area not now a province, so that its inclusion in some formulae would be necessary to cover the entire empire.

²⁸ *PSI* 965. For the obscure relationship between the two measures, see Ch. 8.

²⁹ Crawford (1975: 579 n. 77) rejects such precise dating.

³⁰ For minor recent fragments, see Mihailov (1980), Chaniotis and Preuss (1990), and Sironen (1992).

The inscribed copy is an edict prefaced by the full imperial titles and *dicunt*.³¹ Lactantius (*DMP* 7. 6–7) describes it as a *lex*.

As an edict the text lacks any specific addressee. Nevertheless, the emperors show awareness of an audience by using the vocative, *provinciales nostri*, at *Pr.* 84–5. The whole edict is discussed at length in Chapter 8.*

11a. Edict of Fulvius Asticus (Aezani).³² Late 301/early 302 (text given by Crawford and Reynolds 1975, emended by Oliver 1976).

This must have been issued shortly after the Prices Edict, which it serves to publish. As with no. 4, it was suffixed to the main edict. The term *διατάγμα* is used to describe both the imperial and gubernatorial edicts. Neither contains posting instructions. The governor's Greek edict, however, is followed by the Latin word *proponatur*, obviously his separate instruction for posting.

The governor explains the edict, drawing attention to imperial foresight. He is not quite accurate in his detail. He talks of a fixed and fair price rather than a ceiling price and states that the ordinance is to last for ever. Such differences are all the more significant, since it is far more likely that a greater number of people learned about the edict from the short Greek text than the lengthy Latin one.

12. First Persecution Edict. Posted at Nicomedia, 24 February 303. Lact. *DMP* 13. 1.

Eus. *HE* 8. 2. 4 & 8. 5. 1, *MP pr.* 1 (promulgated in Palestine, Dystros/ March or Xanthicos/April 303).

Passio Felicis, 1 = Musurillo (1972) no. 20 (posted at Tibiucia in Africa, 5 June 303).³³

The text of the edict does not survive.³⁴ Lactantius states that it was published at Nicomedia on the above date, though not on durable material, since the earliest martyr suffered for tearing it down and ripping it up.³⁵ Eusebius does not describe it as an edict, but refers

³¹ The inscription is headed by the abbreviation, *B. F.*, which may stand for *bona fortuna* (Roueché 1989: 268) or *bonum factum* (Giacchero 1974: i. 134 and Ernster 1989).

³² For evidence relating to the governorship of Asticus, see Barnes, *NE* 157, *AE* 1986. 681–2, and Roueché (1989: 319).

³³ For doubt over the identification of Tibiucia, see Duncan-Jones (1974), but see now Maier (1987: 50 n. 15).

³⁴ For a discussion of the process leading up to the edict, see Ch. 10 Sect. ii, with the references cited there.

³⁵ Lact. *DMP* 13. 2 and Eus. *HE* 8. 5. 1. Lieberman (1962: 8–10) argues that a passage

unhelpfully to βασιλικά γράμματα. The passion states: *exiit edictum imperatorum et Caesarum super omnem faciem terrae*. The use of *edictum* may not be technical here and the passage seems to echo Luke's Gospel 2. 1: *exiit edictum a Caesare Augusto ut profiteretur universus orbis terrae*.³⁶ In the passion, the text posted is called a *programma*. Nevertheless, in whatever form, as edict or otherwise, the imperial will is seen being enforced in Palestine from March/April³⁷ and in Africa from May/June.³⁸

The provisions of the edict were for the razing of churches, the surrender of scriptures for burning, and loss of civil rights, especially affecting people of high status. Caesariani were to be re-enslaved.³⁹

The edict was at least partially enforced throughout the empire, although Constantius took as little action as possible and there were no martyrs in his territory.⁴⁰ Some of the effects of the edict can be seen in papyri, such as the necessity for sacrificing in court⁴¹ and the surrender of church property.⁴² This last text shows that the edict led to administrative action by both the prefect of Egypt and the *magister* and *procuratores privatae*. The fierceness of the persecution depended much on the attitude of the governors, who might choose to carry out either more or less than their imperial instructions demanded. Indeed, enforcement depended on an even lower level in the hierarchy, on the actions of local municipal officials, at least according to our evidence from Africa.⁴³

of the Midrash echoes this and other aspects of the edict's reception; cf. *Acta Sanctorum*, September, vi (Antwerp, 1757), 24 Sept., p. 686D (Paphnutius in the Diocletianic persecution), and March, ii (Antwerp, 1668), 15 Mar., p. 391 (Menignus in the Decian persecution).

³⁶ I have given here an Old Latin pre-Vulgate version. For the different Old Latin versions of this passage, see Jülicher (1954: 16).

³⁷ The earliest martyr at Caesarea was executed on 7 June (Eus. *MP* 1. 1-2).

³⁸ The *acta* at Cirta record the enforcement of the edict from 19 May (Optatus, *App.* I (ed. Ziwsa, p. 186) and Augustine, *C. Cresc.* 3. 29. 33; cf. Augustine, *Ep.* 53. 2. 4 (22 May)).

³⁹ This is the orthodox interpretation of Eus. *HE* based on a comparison with Valerian's measures in 258 (Cyprian, *Ep.* 80. 2).

⁴⁰ See Lact. *DMP* 15. 7 for the pulling down of churches by Constantius (but note the denials of Eus. *HE* 8. 13. 13 and *VC* 1. 13. 2). The martyrdom of St Alban in Britain is now assigned to the reign of Severus (C. Thomas 1981: 48-50). Indeed few martyrs outside Africa can be assigned to the western provinces (Ste Croix 1954).

⁴¹ *P. Oxy.* 2601. ⁴² *P. Oxy.* 2673 (Feb. 304).

⁴³ Magnilianus, *curator* at Tibiuca (*Passio Felicis*); Munatius Felix, *flamen perpetuus* and *curator* at Cirta (Optatus, *App.* I); Caecilianus, *duovir* at Aphungi (Optatus, *App.* II). See Maier (1987: 30-1) for summary of African magistrates. For Magnilianus as a typical civic benefactor, see Duncan-Jones (1974).

The destruction of Christian writings as ordered in the edict reflected a view that Christianity could be irrevocably damaged by loss of the scriptures that formed its basis and spread its message.⁴⁴ Diocletian had already made such a provision with respect to the Manichees,⁴⁵ and Constantine followed suit with regard to both pagan and heretical texts.⁴⁶ The effectiveness of such destruction is to be doubted. In Africa, however, the question of the surrender of scriptures was the issue which most excited the persecuted, and denunciations of others as *traditores* were a major feature of the aftermath of the persecution. Surviving accounts show the differing success of the authorities in extracting books for burning, since some people who did succumb to pressure to surrender something, later claimed that heretical or other writings were handed over as substitutes.⁴⁷

13. Second Persecution Edict. Summer 303.

Eus. *HE* 8. 2. 5. and 8. 6. 8–9, *MP pr.* 2.

Eusebius describes this ordinance as *πρόσταγμα βασιλικόν* or *γράμματα*. It ordered the arrest of clergy, possibly as the result of disturbances in Melitene and Syria. It does not seem to have been enforced in the west.

14. Third Persecution Edict. Before 20 November 303.

Eus. *HE* 8. 2. 5 and 8. 6. 10, *MP pr.* 2.

These *γράμματα* ordered that clergy must sacrifice and be freed. This was almost certainly an amnesty to coincide with Diocletian's *vicennalia*, celebrations for which commenced on 20 November 303. Eusebius states that there was in any case a general amnesty for the *vicennalia*.⁴⁸

⁴⁴ Eusebius claims amazement at a blind man who had memorized the scriptures and did not need to read them from a book (*MP* 13. 6–8). On the role of literacy, orality, and memorization in the early church, see Graham (1987. 122–5, 131–3) and Harris (1989: 295–306, 319–21), who warns against exaggerating literacy in early Christianity.

⁴⁵ *Coll.* 15. 3. 6 orders the leading Manichees to be burned together with their scriptures. Note also from the reign of Diocletian the claim that some pagans had even advocated that the senate order the destruction of Cicero's *De Natura Deorum* (Amobius 3. 7).

⁴⁶ Socrates, *HE* 1. 9. 30–1 (cf. *CTh* 16. 5. 66) a letter of Constantine ordering the destruction of Arian writings, as had already been enacted with respect to those of Porphyry, whose works were still being burned at the orders of Theodosius II in 448 (*CJ* 1. 1. 3. 1). Eus. *VC* 3. 66 mentions the banning of heretical books, but Elliott (1991: 167–8) doubts the truth of this assertion. By contrast, Constantine ordered fifty copies of the scriptures for the churches of Constantinople from Eusebius (Eus. *VC* 4. 36).

⁴⁷ For such claims, see Augustine, *C. Cresc.* 3. 27. 30. For an apparently successful seizure of books, see Optatus, *App.* 1 (ed. Ziwsa, pp. 187–8).

⁴⁸ Eus. *MP* 2. 4. For the amnesty in Egypt, see *P. Oxy.* 2187 line 21.

The edict was fulfilled, in that many of the clergy were certainly freed, but they were either forced through the motions, or even deemed to have sacrificed at least notionally, their protests to the contrary being silenced.⁴⁹ The desire of the officials was to appear to have carried out the imperial will.

15. Fourth Persecution Edict. Early 304.⁵⁰

Eus. *MP* 3. 1; cf. Lact. *DMP* 15. 4.

This ordinance enjoined universal sacrifice and was probably confined to the east.⁵¹ Eusebius refers to *γράμματα βασιλικά* containing a *καθολικὸν πρόσταγμα*.

It was probably under the terms of this edict that the new Caesar Maximinus revitalized the persecution not long after his arrival in the east in 305, and he sent *grammata* to the cities to enforce sacrifice.⁵² This appears to have been effected by utilizing the census rolls, which would have been more comprehensive than before, because Galerius extended the poll-tax to the cities for the census of 306.

There is no evidence for *libelli* attesting sacrifice, as under the edict of Decius, whereby individuals presented petitions to the local commissions for sacrifices, which were then validated by official signatures.⁵³

16. *P. Oxy.* 2558 (see Pl. 5). Between 301 and 307.

This is a fragment of an edict of Clodius Culcianus, Prefect of Egypt, promulgating a tetrarchic *διάταγμα*. It is uncertain which tetrarchy is meant. The prefect refers to the *πρόνοια* of the rulers.

17. *CJ* 7. 16. 40 (= letter no. 49). 293/306?

This is an extract from a tetrarchic letter to Verinus. The identification of both governor and tetrarchy is contentious.⁵⁴ The subject is *de liberali causa*. The text begins by referring to an imperial edict: *Iuxta*

⁴⁹ Eus. *MP* 1. 4–5. As a result of this nominal compliance, Eusebius says that only two Palestinian martyrs were created (Alphaeus and Zacchaeus on 17 November).

⁵⁰ The earliest attested deaths under the provisions of this edict took place at Thessalonica on 1 Apr. (Passio Agapae, Irenae, et Chionae = Musurillo 1972 no. 22).

⁵¹ Ste Croix (1954: 84–96).

⁵² Eus. *MP* 4. 8. In his documents of apologia, it was the actions of Diocletian and Maximian that Maximinus blamed for saddling him with the problem of the persecution. This is disingenuous, since, even if the fourth edict was still theoretically in force, it was his own decision to continue its enforcement.

⁵³ For the form and content of Decian *libelli* with texts and translations of over forty examples, see Knipfing (1923) and *P. Oxy.* 3929. For a recent discussion of the Decian edict, which may not have been intended primarily as a persecutory measure against Christians, see Potter (1990: 261–7).

⁵⁴ See letter catalogue, no. 50.



- 5 *P. Oxy.* 2558 = edict catalogue, no. 16 (c.301–7). Clodius Culcianus, prefect of Egypt, promulgates a tetrarchic measure

edicti nostri continentiam . . . It apparently provided that cases in this category should be allowed to proceed even in the absence of one of the parties.⁵⁵

III THE SECOND TETRARCHY TO AD 324

18. *CIL* 3. 12134 and *Inscriptiones Graecae* II–III² 1121. After 19 September 305.

The copies of this constitution are from Tlos (Latin) and Athens (Greek). Most edictal texts of this period are in Latin, including the preamble to the Prices Edict. It is therefore unusual to find a copy in Greek as here.

The law is probably an edict, in that towards the end it tells any interested party to appeal to the governor or prefects, and therefore is not a copy of an *epistula*.

The issuers must be Constantius, Galerius, and their Caesars. The

⁵⁵ On the importance that Diocletian attached to cases of free birth, see *CJ* 3. 3. 2 (edict no. 1*b*) and *CJ* 9. 41. 9 (letter no. 8).

request that documents be sent to the *comitatus* does not specify which is meant, but the find-spots of the inscription (Achaëa and Lycia) suggest that the court of Galerius would be their focus. Galerius should be the true originator of the constitution.⁵⁶

The subject is fiscal debtors. The law seeks to nullify the effect of false *adnotationes* used especially by the Caesariani to strip people of property. No words are too strong for the Caesariani and their *temeritas*. Most of the emperors of our period have reason to vent their annoyance with or suspicion of them.⁵⁷ All the *adnotationes* that might lead to false actions are to be sent to the imperial court, though not apparently for burning as Constantine later provided (edict no. 46).

In the manner of a private rescript, the edict tells those concerned to approach the governors or prefects, who will ensure their protection.

The emperors refer to their own qualities in three ways: *pietas*, *clementia*, and *humanitas* (the last two are both *φιλανθρωπία* in the Greek text).⁵⁸ All are standard imperial virtues used in self-reference.^{59*}

19. *P. Oxy.* 2665. 305-6.

This text is possibly connected with the confiscation of Christian property. The *procurator privatae* has given orders *κατὰ θεῖον πρόσταγμα τῶν δεσποτῶν ἡμῶν βασιλέων τε καὶ Καισάρων*. This may refer back to one of the persecution edicts, but could involve an act of the second tetrarchs, originating from Galerius or Maximinus (note the *grammata* in no. 15 above), since Constantius would be unlikely to take new anti-Christian measures.

20. *CIL* 3. 578 (Corcyra). 305/6.

This fragmentary inscription gives part of the titles of Constantius and Galerius (though not the Caesars) with partial texts both before and

⁵⁶ Steinwenter (1962: 138).

⁵⁷ Diocletian (*CJ* 10. 1. 5), Constantine (*CTh* 9. 42. 1, 10. 1. 5, 10. 8. 2, *CIL* 5. 2781 lines 31-4), and Licinius (*CTh* 10. 7. 1); also *Inscr. Cret.* 1. 18. 189 = edict no. 36 (Constantine or Licinius). Other imperial servants that were difficult to control were the *frumentarii*, who were suppressed by Diocletian, soon to be replaced by the equally unpopular *agentes in rebus* (Aurelius Victor, *Caes.* 39. 44-5, noting how these officials were most easily able to act against *remotissimo cuique*).

⁵⁸ See Steinwenter (1962) for some points of language, comparing the Greek and Latin. He describes the Greek as a straight trans. of the Latin.

⁵⁹ For some contemporary examples of *clementia*, see letters nos. 10 and 70, edicts nos. 3 and 26, *CTh* 2. 6. 1, 5. 2. 1, 8. 5. 1, 10. 14. 1, 10. 15. 2, 11. 30. 13, 12. 1. 14, *Sirm.* 1, *FIRA*² i no. 95, Bruns⁷ no. 95. For varying uses of *humanitas*, see esp. the Prices Edict preamble (Ch. 8 Sect. iii), though it is also a standard concept in the private rescripts (e.g. *CJ* 5. 62. 23). For *philanthropia*, see also edict no. 56.

after. The former text is apparently concerned with inheritance and includes the words *debitae*, *heredem*, *ad praesid[em]*, and *caus[a]*. As such it resembles a private rescript, but the text prefaced by the imperial titles could be an edict or letter. There is no reason why this should not be a dossier of different types of document.^{60*}

21a. Constantine ends the persecution. 306.

Lactantius claims that Constantine moved swiftly to end the persecution and restore rights to Christians.⁶¹ This may not have entailed much action, since the mild attitude of Constantius meant that the persecution had had little effect in his provinces, except perhaps in Spain, which he only took over in 305 from Maximian. Eusebius, of course, does not mention such a measure since he does not admit that Constantius complied with the persecution even minimally.

21b. Maxentius ends the persecution. 306/8.

Eusebius states at *HE* 8. 14. 1 that Maxentius *ἀνεῖναι προστάττει διωγμὸν* (cf. Optatus 1. 18 in relation to Africa: *indulgentiam mittente Maxentio*). This may have been done by edict. This could have taken place immediately in the first winter of Maxentius' rule (306/7), although it is possible that formal cessation was only promulgated after the flight of Maximian from Rome in April 308.⁶² Augustine attests later letters of Maxentius and his praetorian prefect allowing restoration of property.⁶³

22. So-called Fifth Persecution Edict (Maximinus). 309.⁶⁴

Eus. *HE* 8. 14. 9, *MP* 9. 2 (cf. Lact. *DMP* 36. 4–5).

This edict (if it was an edict) attempted to promote a revitalization of paganism coupled with an attack on Christians. Eusebius speaks of *γράμματα* of Maximinus generating *προγράμματα*, *ἐπιστολαί*, and *δημόσια διατάγματα* from governors directing city officials to carry out the *βασιλικὸν πρόσταγμα*. Temples were to be rebuilt, high priests appointed for the provinces, and universal sacrifice enjoined. Further, the participation of Christians in civic life was undermined, since food

⁶⁰ If the final surviving words of the first text belong together as *nostri cohere[des?]*, the two texts should then represent a petition to the emperors on a matter of inheritance, followed by the imperial reply (whether letter or private rescript). However, in the fragmentary state of the text, the word *nostri* might instead be an imperial adjective to go with a missing word from the previous line. ⁶¹ *DMP* 24. 9.

⁶² For discussion of the form, context, and date of Maxentius' measure, see Kriegbaum (1992: 22–34). ⁶³ See letter catalogue, no. 52 (310/12).

⁶⁴ Barnes (*CE* 153) assigns this to late 309, indicated by a renewal of martyrdoms in Palestine, there having been a lull since mid-308.

in the market-places and entrants to the baths were to be sprinkled with sacrificial and, to Christians, polluting libations.

23. *P. Cairo Isid.* 8. 14 June 309.

This is a declaration of persons ἀκολουθῶς θεῖῳ προστάγματι τῶν δεσποτῶν ἡμῶν, etc.⁶⁵ The enactment was no doubt similar to no. 4.

24. *CIL* 3. 6979 (Sinope). 310.

This fragmentary inscription, headed by the word *EXEMPLUM* (*edicti* or *sacrarum litterarum*?), gives part of the full titles of Galerius with Maximinus erased and only part of Constantine's name. No trace of Licinius has survived. The text refers to incursions of the enemy and embraces *omnibus provinciis nostris*. The remains of the word *provisio* show the standard emphasis on imperial *providentia*.*

25. *CIL* 3. 12133 (Tlos). 310.

This even more fragmentary inscription contains only traces on the extreme right of a stone which also has part of the *edictum de Accusationibus*. The remains suggest a restoration of the college of emperors as it was in 310.⁶⁶ It is impossible to identify either the form or content of the document.

26. Toleration edict of Galerius. Posted at Nicomedia, 30 April 311. *Lact. DMP* 33. 11–35. 1; *Eus. HE* 8. 16. 1 and 8. 17. 1–11.

Lactantius describes this enactment as an edict and gives the Latin text. Eusebius gives the full imperial titles, followed by a greeting to the provincials, as though a letter, and then a Greek translation of the pronouncement.⁶⁷ He describes the imperial action variously as: νόμῳ τε καὶ δόγματι βασιλικῷ and βασιλικά διατάγματα. He also says: παλινωδιᾶν ἥδον χρηστοῖς περὶ ἡμῶν προγράμμασιν καὶ διατάγμασιν ἡμερωτάτοις. Eusebius, therefore, seems to regard the palinode as an edict. It seems to have been published only in Galerius' provinces.⁶⁸

The emperors say that in another letter they will tell the judges how they are to observe the new law. This implies that this text is a letter,

⁶⁵ The rulers mentioned are Maximian, Galerius, Licinius, Maximinus, and Constantine. For a full restoration, see L. C. Youtie (1977: 300).

⁶⁶ See Barnes (1976c: 277–9). The only recoverable text is *cuncti*[?].

⁶⁷ The variants between Lactantius and Eusebius are given in the useful notes to the trans. by Coleman-Norton (1966: 20–2).

⁶⁸ *Eus. HE* 9. 1. 1. This passage talks of Asia and the surrounding provinces, but Licinius probably saw to its application throughout the Balkans over which he took direct control following Galerius' death only days after the publication of the edict. For Licinius as a positive influence behind the edict, see Keresztes (1983: 391). The exact date of

despite the other indications to the contrary. We do not know if this other letter was ever written, though it was perhaps intended to deal with the question of restoration of property.⁶⁹

The emperors refer to their own *clementia*. Note also the phrase *iuxta leges veteres et publicam disciplinam Romanorum*, which shows similarities with the wording and sentiments of the Damascus edict.⁷⁰

27. Maximinus. 311/12.

Eus. *HE* 9. 5. 1, cf. 1. 9. 3.

Edicts (*προγράμματα*) appear to have been used to publish the forged Acts of Pilate. These would probably have been local not imperial edicts, though imperial approval was involved. The *dux* at Damascus also published documents defamatory of Christians at the emperor's command.⁷¹

28. Maximinus. Spring/summer 312.⁷²

Eus. *HE* 9. 10. 12.

Eusebius here refers to *διατάγματα* set up less than a year before Maximinus' recantation. Strictly, these should be edicts, but may refer to the rescripts to the cities, such as were inscribed at Tyre, Arycanda, and Colbasa (the last in April 312).⁷³

29. Eus. *HE* 9. 9. 12 and 9. 9a. 12. Late 312.

Eusebius here discusses the actions of Constantine and Licinius on behalf of the Christians. He employs the terms *νόμον τελεώτατον* and *προγραμμάτων καὶ νόμων* to describe their legislation. This law was transmitted to Maximinus in the east, who did not publish it, but did issue a letter ordering the end of active persecution (see next entry). The law in question is described as a joint action of Constantine and Licinius. However, it cannot be the so-called edict of Milan, the only genuine joint imperial pronouncement, since the meeting of Constantine and Licinius, which led to its composition, took place at the same time as the marriage of Licinius and Constantia in February 313. It was

Galerius' death is unknown, and the day in May 311 on which it was announced at Nicomedia has dropped out of Lactantius' text (*DMP* 35. 4). Galerius was buried at Romulianum (Gamzigrad in eastern Serbia), where the remains of two imperial mausolea (probably of Galerius and his mother Romula) near the tetrarchic palace have recently been investigated (Srejšević and Vasić 1994).

⁶⁹ Mitchell (1988: 113).

⁷⁰ e.g. *iuxta disciplinam iuris veteris* at *Coll.* 6. 4. 2. For further examples see edict no. 3.

⁷¹ Eus. *HE* 9. 5. 2.
⁷² On the chronology of the pronouncements of Maximinus, see the summary in Barnes, *NE* 67–8, with Mitchell (1988: 112–16).
⁷³ As assumed by Mitchell (1988: 115).

precisely during the wedding celebrations that Lactantius claims that Maximinus was hurrying across Asia,⁷⁴ preparatory to attacking Licinius' territory. Thus, Licinius and Maximinus were in conflict before any laws from Milan could have reached the east.

30. Eus. *HE* 9. 9a. 9 (= letter catalogue, no. 57). Late 312.

This passage is from a letter of Maximinus to his praetorian prefect Sabinus, on the cessation of persecution. He instructs the prefect to make the imperial order known by a prefectural *διάταγμα*. Sabinus appears as the principal intermediary through whom the emperor made his wishes known. It is not entirely clear whether the prefect's edict is simply the publishing edict or is to contain the full details of the measure, so that the emperor can distance himself from it as in 311, by not publicly issuing a document in his own name.⁷⁵ The former seems more likely, since Eusebius' version should have originated from a publicly posted copy of the imperial letter.

31. *CTh* 10. 10. 2. Given(?) and posted in Trajan's Forum, 1 December 312.⁷⁶

Constantine *ad populum*.

This is the earliest surviving *CTh* Constantinian text (and edict *ad populum*). The *populus* in question must be the people of Rome, and many of the examples in this catalogue were issued or posted in Rome.⁷⁷ This and the prefect's edict no. 54 are the only texts in our selection that specify where in Rome the document was posted: the Forum of Trajan in each case.⁷⁸

⁷⁴ Lact. *DMP* 45. 1–3.

⁷⁵ See letter catalogue, no. 54.

⁷⁶ For the date, see Seeck, *RG* 160.

⁷⁷ See nos. 32, 40, 41, 44, 48, 51. The first three, like this edict, coincided with the imperial presence in Rome (312–13 and 315).

⁷⁸ Edict no. 54 must have been posted in Trajan's Forum with the letter that it published (*FV* 249); cf. other letters in Trajan's Forum: *CTh* 9. 19. 2 and 10. 1. 2. Two Constantinian texts can also be located, in that one was read out in the Senate (letter catalogue, no. 62) and the other in the palace (*CTh* 10. 8. 3); a third is described as *pp Romae ad senatum* (*CJ* 2. 52. 6, but not so recorded in the parallel text, *CTh* 2. 7. 2). Trajan's Forum is almost the only attested place of posting in later *CTh* examples: 1. 9. 1, 4. 12. 5, 9. 7. 6 (but = *Coll.* 5. 3, in *atrio Minervae*), 9. 17. 3, 10. 10. 31, 11. 20. 4, 14. 2. 1 (cf. Val. III, *Nov.* 2. 2, 11, 19, 21. 1, 23, 25, 27, 31); but note *forum Aproniani* (*CTh* 13. 5. 29), *lecta in Pantheo* (*CTh* 14. 3. 10); *CTh* 16. 2. 20 addressed to Pope Damasus is described as *lecta in ecclesius*. For a general account of places of posting in Rome, see Liebs (1985c). Somewhat different is a reference to a rescript being brought forward in court: *alleg. . . in basilica Thermarum Commodianarum?* at *Cons.* 9. 2 (for other literary references to the *Thermae Commodianae*, see Richardson 1992: 390).

This edict seeks to repress informers,⁷⁹ no doubt in an attempt to stifle an epidemic of accusation and counter-accusation in the aftermath of the overthrow of Maxentius. It provides a *locus classicus* for the style of late Roman pronouncements, since it is not certain if its reference to the ripping out of tongues is metaphorical or literal.

32. *CTh* 10. 10. 1 and 13. 10. 1 (*CJ* 11. 58. 1). Posted Rome, 18th January 313.

Constantine *ad populum*.

These two passages form part of one edict. The first reveals that it is only an extract, since it is preceded by the words *post alia*, while the second is followed by the words *et cetera*. The first text alludes to and reiterates the capital penalty for *delatores* from the previous entry. The second passage is concerned with preventing the powerful, through collusion, passing on their tax burden to the *inferiores*.

33. Eus. *HE* 9. 10. 7–11. May 313.⁸⁰

This is the recantation of Maximinus, granting full toleration and restitution to the church. It has no addressee, but also lacks the edictal *dicit*. However, the translation of Eusebius should denote an edict, where he says: *τοῦτο τὸ διάταγμα προτεθῆναι ἐνομοθετήσαμεν*. The heading gives Maximinus without any colleagues and with an extensive list of titles.

There are the standard references to imperial *pietas* and *providentia*.

As with Maximinus' letter to Sabinus (letter no. 55), it is an apologia that lays the blame for the problems of the persecution upon anybody else rather than the emperor himself.^{81*}

34. 'Edict of Milan' (= letter catalogue, no. 66). Posted at Nicomedia, 13 June 313.

Lact. *DMP* 48. 12; Eus. *HE* 10. 5. 14.

The 'edict of Milan' is not an edict, but a letter to the governor of Bithynia (Palestine in Eusebius). However, it does call on the governor to publish the letter by posting it in front of an edict (*programma*) of his own. Since Licinius was in the city at the time, one wonders why he did not issue the edict himself; but if the letter was in the nature of a circular for all governors, the text was not adapted to the imperial presence in the same city.

⁷⁹ Cf. nos. 32 and 35 below, and *Epitome de Caesaribus* 41. 14.

⁸⁰ For the date, see the arguments of Mitchell (1988: 115).

⁸¹ Discussed *ibid.* 115.

35. *Edictum de Accusationibus* (*FIRA*² i no. 94 = Bruns⁷ no. 94) (Licinius?). 1 January 314.

Copies of this edict have been discovered at five locations, four in the east and one in the west (with ultimate provenance from the east). These are: *Inscr. Cret.* 1. 18. 188 (Lyttus); *CIL* 3. 12133 (Tlos); *CIL* 5. 2781 (Padua); *AE* 1957. 180 (Sinope); Habicht and Kussmaul (1986: 136) (Pergamum).

Extracts from this edict also occur at *CTh* 9. 5. 1 and *CJ* 9. 8. 3.⁸² They are both in the form of letters addressed from Constantine to Maximus *pu* (*praefectus urbi*). The only available urban prefect of this name was in office 319–23, so that the date has in the past been emended to coincide with his tenure.⁸³ However, it seems preferable to make the smallest necessary alteration to the text, and Barnes has suggested that *pp* for *praefectus praetorio* in place of *pu* would make Licinius the issuer and Maximus his prefect.⁸⁴ This also provides a context, since the edict comes only some six months after the death of Maximinus, when repression of the accusations and counter-accusations consequent on such an event would need some restraint.⁸⁵ For the attribution to Licinius, see Barnes, *NE* 127–8 and Corcoran (1993: 115–17); cf. Chapter 11 Section ivc, and for the nature of the documents concerned, see below in this chapter, Section iv.

The edict seeks to repress delation, providing that those who bring accusations of treason will be liable to torture, just like the accused, if they do not have clear evidence.⁸⁶ Slaves and freedmen who dare to

⁸² For a text setting the code extracts side by side with the inscription, see Heichelheim and Schwarzenberger (1947: 1–4). Relatively minor verbal variants are listed on pp. 7 and 16–17 nn. 53–7.

⁸³ Seeck (*RG* 169) emended the date to 320 (*p.c. Constantini A. et Licinii C.*).

⁸⁴ Dr Benet Salway suggested in personal comment (Nov. 1990) that even this emendation would be unnecessary if *pu* were taken to mean *p(erfectissimus) v(ir)*, so that Maximus could be an ordinary *praeses*. *v(ir) p(erfectissimus)* does occur on occasion in the codes (e.g. *CTh* 10. 8. 1 and 13. 10. 2). In one other case, an abbreviation of rank has been corrupted into an office. Symmachus appears at *CTh* 2. 15. 1 as either *vic(arius)* as accepted in *PLRE* i. 863 (Symmachus 1), or correctly as *v(ir) c(larissimus)*, since he was the senatorial proconsul of Achaia (see Barnes, *NE* 104).

⁸⁵ Cf. Constantine in nos. 31–2 above.

⁸⁶ The inscription provides for torture of the false accuser to reveal who suborned him, whereas the code extract simply provides for the torture of the accomplice. It seems as if the code compilers have adapted the original law to harmonize with a law of 423 (*CTh* 9. 1. 19) that prevented the guilty being tortured to extract the names of accomplices (Heichelheim and Schwarzenberger 1947: 9–10). This example of *CTh* emendation is rare, though probably within the guidelines (*emendandi incongrua*—*CTh* 1. 1. 6). The text may, of course, have already been contaminated.

accuse their masters or patrons are to be crucified.⁸⁷ Anonymous *libelli* of denunciation are to be burned.⁸⁸

The short preamble contains a standard imperial topos: *unde consulentes securitati provinciarum nostrarum eiusmodi remedia prospeximus* ('And so, taking thought for the security of our provinces, we have planned the following solutions').*

36. *Inscr. Cret.* 1. 189 (Lyttus)⁸⁹ (Licinius?). Undated, but probably contemporary with the *edictum de Accusationibus*.⁹⁰

This text refers to itself as an edict (line 8). Although lacking any manifest signs of the date,⁹¹ the language is compatible with the tetrarchic period. The imperial virtues mentioned are *benevolentia* (ll. 20, 33, 44–5), *liberalitas* (l. 3), and *munificentia* (l. 6).

The law orders the restitution of property wrongfully seized by the fisc and criticizes the *temeritas* of the Caesariani. As with the law of Constantius and Galerius (no. 18 above), the governor is to act as guardian to ensure that everybody gets their dues.

The strongest resemblance to the edict *de Accusationibus* lies in the identical list of officials to whom the emperors say they have written about the matter, a list not paralleled in any other contemporary text. This is discussed further in Section iv below.*

37. *CTh* 8. 4. 2 (*CJ* 12. 57. 1). Posted Carthage, 10 May 315. Constantine *edicto suo ad Afros*.

This is the only Theodosian text in this catalogue that explicitly calls itself an edict in the heading. It seeks to restrain the abuses of the *stationarii* (cf. *IL Afr.* 269) and is quite specific to Africa and the surrounding provinces: *neve quis amplius quam duos agasones ex provincia secum habeat vel de Numidia sibi adiungat neve ex aliis provinciis agasonem habeat* ('No one shall have with him more than

⁸⁷ The presence of crucifixion as a penalty is one of the main reasons for attributing the edict to Licinius, since Constantine abolished that mode of punishment, though the date of such abolition is unknown. See Aurelius Victor, *Caes.* 41. 4–5, who also describes Licinius executing philosophers *servili more*.

⁸⁸ This is also ordered at *CTh* 9. 34. 3; cf. 10. 1. 3 (edict no. 46 below). Note also Constantine burning the *libelli* of disputing bishops (Socrates, *HE* 1. 8. 18–19).

⁸⁹ Or possibly Hieropytna, according to the original publication.

⁹⁰ An anonymous but probably contemporary text from Crete is a fragmentary letter from Knossos (Chaniotis and Preuss 1991: 193 = *AE* 1991. 1602). It uses the typical form of address, *dicatio tua* (see App. F). For another possible imperial text (late 3rd cent.?), see Johnston and Frend (1962: 235–6) = Chaniotis and Preuss (1990: 196).

⁹¹ Line 2 mentions *supra dictum diem*, but no trace of this date remains.

two pack-animal drivers from the province (sc. Africa) or join to himself drivers from Numidia, nor have a driver from other provinces’).

38. *CTh* 2. 30. 1 (*CJ* 8. 16. 7). Given at Sirmium (Sirmio?), 2 June 315. Constantine (Licinius?) *ad universos provinciales*.

This edict forbids slaves and oxen being taken as pledges for civil debts, since this interferes with the payment of taxes. The question of attribution to Licinius is discussed in Chapter 11 Section ivc no. 5.

39. *CTh* 11. 30. 3. Given at Rome, 25 August 315.

This is a letter to the proconsul of Africa, instructing him to obey the contents of an edict, *quod super appellationum negotiis finiendis iam generaliter constitutum est* (‘which has already been generally decreed about the completion of cases on appeal’). This edict is also referred to in a letter to the proconsul’s predecessor earlier in the year, but does not itself survive.⁹² The only other Constantinian reference to a general enactment is in the letter to the decurions of Cologne.⁹³

40. *CTh* 1. 2. 2. Posted Rome, 29 August 315. Constantine *ad populum*.

This edict was posted during Constantine’s presence in Rome for his *decennalia*. It rules that rescripts *contra ius* are not valid. As shown elsewhere (Chapter 3 Section iii), rescripts *contra ius* should never have been valid in any case, so that this is not an innovative measure that alters the status of rescripts. It is presumably an attempt to restrain the endemic problem of such rescripts being obtained through mistake or corruption.⁹⁴ This text may be the law (specifically called an *edictum*) which is mentioned in the next *CTh* text (1. 2. 3, 317.)⁹⁵ Addressing the urban prefect Septimius Bassus, the emperor in his leniency allows rescripts issued before the edict to be valid. The edict is therefore not retrospective and effectively grants an amnesty for everything before Constantine’s *decennalia*.⁹⁶

41. *CTh* 10. 1. 1. Given at Rome, 13 September 315. *Imp. Constantinus et Caes. ad populum*.

⁹² *CTh* 11. 36. 3 (May 315—Seeck, *RG* 163); *lege de appellationibus data*. Gaudemet (1981: 49) identifies it as the edict behind letter catalogue no. 73.

⁹³ *CTh* 16. 8. 3.

⁹⁴ See the discussion of this and other texts by Simon (1977: 11–16).

⁹⁵ The MS date is Dec. 316, but since this antedates Bassus’ tenure, Seeck (*RG* 165) emends it to 317.

⁹⁶ Utilizing the principle of *praescriptio longi temporis*, Constantine confirmed in possession those who had held fiscal property up to his *decennalia* (*CTh* 4. 11. 1, dated May 316 as per Seeck, *RG* 165).

This is another edict issued while Constantine was in Rome. The heading is a rare acknowledgement of the Caesars, but at a time when none had yet been appointed. The edict imposes a period of one year before goods confiscated by the fisc can be disposed of, whether by way of sale or gift. This gives time for the original owners to prove that the property was wrongfully seized.

42. *PSI* 112 (Bruckner and Marichal 1986: 27, no. 781).
Posted(?) at Rome, 316.

This is a fragmentary papyrus, containing traces of the conclusion of what must be an imperial pronouncement in Latin. These appear to refer to the promulgation and dissemination of the measure to the provinces, to governors, and by the edicts of governors.⁹⁷

43. *CTh* 8. 4. 3, 10. 7. 1, 10. 20. 1 (*CJ* 11. 8. 1), 12. 1. 5. Given 21 July 317 (at Nicomedia?).
Constantine (Licinius?) *ad Bithynos*.

This edict seeks to control entitlement to the perfectissime and other equestrian ranks. Its attribution to Licinius is discussed in Chapter 11 Section ivc no.2. It is possible that it was addressed to the Bithynians, because it was issued by the emperor while in residence at his imperial capital, although it could be a letter in response to a provincial embassy.⁹⁸

A wide range of persons is allowed to hold equestrian ranks, though often only on completion of various offices (e.g. *primipilares*, *Caesariani*, and *decurions*). Particular provision is made to prevent *decurions* obtaining equestrian rank, and thereby immunities, through corruption as a means of avoiding *munera*. Only *monetarii* are absolutely forbidden to hold such ranks.

44. *CJ* 4. 21. 15. Given (posted?) at Rome, 21 July 317.
Constantine *ad populum*.

This is a very short extract stating that the evidence of documents and of witnesses are of equal weight.

45. *CTh* 9. 16. 2.⁹⁹ Given 15 May 319.
Constantine *ad populum*.

⁹⁷ Thus, *ad omnium p[rovinciarum(?)] iudices diversos ad provincias nostras* (lines 4-5) and *per edicta eorum iussione n[ost]ra* (l. 6). ⁹⁸ As Millar (1983: 93).

⁹⁹ The Justinianic compilers have added a phrase from this edict into their version of the preceding Theodosian text (*CTh* 9. 16. 1 = *CJ* 9. 18. 3). Eusebius mentions Constantinian laws on this subject at *VC* 4. 25. 1.

This edict bans *haruspices* and priests from private houses,¹⁰⁰ but allows public sacrifices.¹⁰¹ Pagan practice is described as *praeterita usurpatio*, which should mean simply 'past usage', rather than carrying any pejorative sense. Similarly, *CTh* 9. 16. 1 uses the word *superstitio*, probably in the sense of divination (even if illicit divination), although this meaning coexists with a negative Christian usage, as in a letter of 323.¹⁰²

46. *CTh* 10. 1. 3 (*CJ* 10. 1. 6). Given 30 May 319.¹⁰³
Constantine *ad provinciales*.

This edict commands the burning of documents relating to fiscal actions not brought at the proper time, even though they might be quite justified.¹⁰⁴ The emperor then states that his purpose is to discourage vexatious private litigation, by setting the example of the fisc abandoning even those cases in which it is in the right.

47. *CTh* 3. 2. 1 (*CJ* 8. 34. 3), 4. 12. 3, 8. 16. 1, 11. 7. 3, *CJ* 6. 9. 9, 6. 23. 15, 6. 37. 21. Given at Serdica, 31 January, posted at Rome, 1 April 320.¹⁰⁵

Constantine *ad populum*.

This is Constantine's major edict on marriage and testamentary law, including abolition of some of the penalties of the *Lex Papia Poppaea* and all the formal requirements for the making of a valid will. The *CJ* extracts are dated in the subscripts to 339, but a reference in a law of Justinian and the testimony of Eusebius support the attribution to Constantine.¹⁰⁶ As discussed in Chapter 3 Section viii, Licinius may have issued an edict on these same topics.*

¹⁰⁰ Note that, in a letter on the same topic to the urban prefect in the next year, Constantine stated that *haruspices* who contravened the law were to be burned and their clients relegated to an island, while the accusers were not to be considered delators, but rather rewarded (*CTh* 9. 16. 1, dated 320 by Seeck, *RG* 169).

¹⁰¹ Cf. *CTh* 16. 10. 1.

¹⁰² *CTh* 16. 2. 5. For these differing uses of *superstitio*, see Salzman (1987: 177).

¹⁰³ Seeck, (*RG* 65, 168; followed, with a question mark, by Barnes, *NE* 74) assigns *CTh* 5. 10. 1 (*CJ* 4. 43. 2) to 319. Seeck supposes that *FV* 34 (which he emends from 313 to July 329) refers to this constitution and so must post-date it. This need not be so (Simon 1977: 37–8; Nardi 1984). 329 is accepted by Evans-Grubbs (1993a: 134) and Boswell (1988: 70–1). However, Seeck also moves this constitution to try and match Constantine's movements, so that 319 is not impossible. The text is an edict of Constantine *italis suis*, given at Serdica, 18 Aug. 329, on the subject of the sale and recovery of children.

¹⁰⁴ For these acts of abolition (*vetera reliqua abolita*), see the discussion on the *Anaglypha Traiani* by Torelli (1982: 91, 108–9, pls. IV. 2, 11, 12, 16).

¹⁰⁵ For the date, see Seeck, *RG* 169.

¹⁰⁶ *CJ* 5. 70. 7. 3 and Eus. *VC* 4. 26. 5–6. The Constantinian dating is demonstrated by Albanese (1984).

48. *CTh* 12. 1. 7. Posted 20 February 320.

Constantine *ad edictum*.

As indicated in the introduction to this chapter, the form of this heading is not understood, but may denote an edict. This text calls the sons of decurions in the province of Carthage to undertake *munera* from the age of 18. It appears to be a geographically limited measure.

49. Persecution of Licinius. 321/4.

The exact chronology of Licinius' anti-Christian measures is unclear. It is unlikely that they should be placed before the disagreement between the two Augusti over consuls (321), and they might have been taken only shortly before the final confrontation.

There does not seem to have been anything approaching a general persecution.¹⁰⁷ The emperor dismissed Christians from his household and from the imperial service, while some bishops may have been trapped and condemned in various localities.¹⁰⁸ None of this need have necessitated specific legislation. Through his own enactments, Constantine granted amnesties and restitution to those who suffered under Licinius, but this need not have meant solely persecuted Christians, but all those ill-used by the 'tyrant'.¹⁰⁹

It is likely, however, that Licinius did issue an edict or edicts on Christian matters, with the following measures:

- (1) a ban on bishops' synods (*Eus. VC* 1. 51. 1);
- (2) an order separating women from men in worship and instruction (*Eus. VC* 1. 53. 1);
- (3) an order forcing church meetings to be held outside city bounds (*Eus. VC* 1. 53. 2).

The first of these should perhaps be seen in the light of the sudden explosion of the Arian controversy, and might have been as much a measure to hinder the opponents of Licinius' favourite, Eusebius of Nicomedia, as to undermine the intercourse between Christian communities.¹¹⁰

50. *CTh* 12. 6. 1. Given 7 April 321.

Constantine *ad edictum*.

¹⁰⁷ For accounts, see Barnes (*CE* 70-2) and Judge (1983: 24-8).

¹⁰⁸ *Eus. VC* 2. 1-2 and Socrates, *HE* 1. 3. On the *Passio* of the XL Martyrs of Sebasteia, the most notable Licinian martyrs, see Karlin-Hayter (1991). Note also Sozomen, *HE* 9. 2. 1.

¹⁰⁹ *Eus. VC* 2. 30-5.
¹¹⁰ Suggested by Judge (1983: 27), Barnes, *CE* 376 n. 154, id. (1993: 16), and Corcoran (1993: 112).

See edict no. 48 for the heading. This text lays the responsibility for making good shortfalls in the accounts of tax-collectors upon their nominators.

51. *CTh* 16. 2. 4 (*CJ* 1. 2. 1). Posted at Rome, 3 July 321.
Constantine *ad populum*.

This important edict enacts a further revision of testamentary law. Complete freedom is given to make bequests to the Catholic Church.¹¹¹

52. *P. Ryl.* 607 (cf. *P. Oslo* 83) Revaluation decree of Licinius? c.321.

This papyrus refers to a halving of the value of the *nummus* from 25 to 12½ *denarii* carried out by an imperial college. This reform is commonly attributed to Licinius.¹¹² It must have been enacted by an edict similar to Diocletian's Currency Decrees, which it may in this instance have been effectively reversing.

53. *CTh* 1. 1. 1 (*CJ* 1. 23. 4). Given at Savaria, 26 July 322.
Constantine *ad Lusitanos*.

This edict to the Lusitanians denies validity to any *edicta sive constitutiones* that lack diurnal and consular date. All imperial pronouncements without a date (and which were probably provided with the subscript formula *sine die et consule* by Justinian's commissioners) predate this edict, and are attributable to the Gregorian or Hermogenian Codes.

54. *FV* 249. Posted at Rome (Forum of Trajan),¹¹³ 3 February 323.

This is a letter to the urban prefect, reforming the law of donations. It ends with an instruction to him to publish the imperial law with an edict of his own.

55. *CTh* 11. 16. 3 (Licinius?). Accepted 24 April 324.
Constantine *ad edictum Calchedoniensium et Macedoniensium*.

The form of this text is inexplicable, as it mixes a city with a province, each from a different diocese. Some have suggested emending *Macedonienses* to *Nicomedienses*.¹¹⁴ The text is concerned to see that

¹¹¹ The specification of catholicity, of course, was designed to hurt schismatics (at this time, the Donatists).

¹¹² See Hendy (1985: 464–5).

¹¹³ Trajan's name has to be restored in the subscript. The parallel extracts preserved elsewhere only mention Rome (*CTh* 3. 30. 2 = *CJ* 5. 37. 21, *CTh* 8. 12. 1 = *CJ* 8. 53. 25, and *Cons.* 9. 13).

¹¹⁴ The apparent mixing of populations living under Constantine and Licinius in the heading is avoided by Seeck, since he dates it to 325 (*RG* 174). See Ch. 11 Sect. ivc no. 6.

the taxes of cities are not unfairly laid upon the weak for the advantage of the strong.

56. *P. Oxy.* 889, revised in Barnes, *NE* 234–7.¹¹⁵ At Nicomedia(?), 12 December 324.

Since the place is only represented by uncertain final letters, the date may represent either the day of issue (at Nicomedia?) or day of posting (at Alexandria?).¹¹⁶ Barnes places Constantine at Antioch in December 324,¹¹⁷ although as an approximate date it need not preclude the emperor's presence at Nicomedia in that month.

This edict is cited above a petition, probably for exemption from liturgies on the grounds of age. Although very fragmentary, the text appears to describe the emperors in their *philanthropia* lowering the age for exemption from *munera* (or poll-tax?) from 70 to 60. As either a reversal of the increase in the age of exemption made by Licinius or a spontaneous act of generosity by the victorious 'liberator', this edict represents an appropriate action by the new master of the east.¹¹⁸

57. *CTh* 7. 20. 1. After Constantine's entry into Nicomedia, c.September/November 324?

¹¹⁵ Originally recognized as an edict of Constantine and not Diocletian by J. D. Thomas (1976) and Barnes (1976c). Further emendations also proposed by Barnes and Worp (1983).

¹¹⁶ The only other contemporary papyrus constitution in Greek originating from Nicomedia is *P. Laur.* IV 169, dated to 326 (Constantine VII and Constantius Caesar I consuls). Keenan (1985) first identified it as an imperial constitution and deduced that it was issued by Constantine in Sept. 326 from Nicomedia. Since this is clearly incompatible with Constantine's known movements (as per Barnes, *NE* 77), *CLRE* (243, 636–7) and Barnes (1989b: 413–15; 1993: 226) read the date as 354 (Constantius VII and Constantius Caesar III consuls), with the issuer being Gallus from Nicomedia. However, in the fragmentary state of the papyrus, there is no need to suppose that the constitution was issued as opposed to posted there. Two texts of 326 (probably part of a single law) show documents posted in the east while Constantine was in Italy: *CTh* 9. 7. 2 posted at Nicomedia in Apr. and *CJ* 5. 26. 1 posted at Caesarea in June. There is thus no reason why this papyrus should not have originated from the copy posted at Nicomedia in 326 by the praetorian prefect Evagrius, who remained in the east while Constantine visited Italy (for Evagrius in the east, see *PLRE* i. 284 (Evagrius 2) and Barnes, *NE* 131). As preserved, the consular date gives an unidentified cos. VII with a Constantius Caesar. The numeral ζ' for 7 appears next to the break on the left of the papyrus, but enough of it survives to make any other numeral unlikely (I am grateful to Dr J. Rea of the Ashmolean Museum for confirming the reading from the published photograph). ¹¹⁷ *NE* 76.

¹¹⁸ It appears that before Constantine the age-limit for poll-tax was 60 and for liturgies 70. Thus the emperor is either reversing an increase in the poll-tax limit (made by Licinius at the census of 321?) or simply reducing a long-standing liturgical limit. In his as yet unpublished study of age-limits in Egyptian papyri, Dr T. G. Parkin of Victoria University of Wellington argues for the latter interpretation. The high incidence of petitions for exemptions from liturgies tends to support his interpretation. See Ch. 5 Sect. iic.

This is a letter to a governor, sending a copy of an edict on veteran privileges, for those veterans discharged after the fall of Licinius. The letter bears the impossible date of April 318, which Seeck alters to April 326. He supposes that it refers to the indulgence granted in the *acta* of *CTh* 7. 20. 2, which he dates to March 326, shortly before this letter.¹¹⁹ But since the text refers to the victory at Adrianople on 3 July (not mentioning the year)¹²⁰ and states that the veterans were discharged at Nicomedia, it may refer to a measure immediately following Constantine's entry into Nicomedia.¹²¹

IV THE INTERRELATIONSHIP OF EDICTS AND LETTERS

This and the previous chapter have provided a survey of imperial edicts and letters in the tetrarchic period. In a number of instances, there is confusion over the exact nature of the documents concerned and therefore over the appropriate classification within the major categories of imperial pronouncements that I have covered: namely edicts, letters, and private rescripts. I wish to examine the implications of this further.

As early as Marcus Aurelius, we find a document that cannot seem to decide whether it is a letter or an edict.¹²² In our own material the formal differences between letters and edicts are open to question. Although lacking a specific greeting, the Prices Edict still addresses *provinciales nostri* in the body of the preamble. This is not so different from Constantine's letters to the provincials of Palestine and to the eastern provinces.¹²³ Both edict and letters are general unsolicited pronouncements to the population at large. It is often said that edicts and letters can be distinguished since only letters carry posting instructions. This is not a universally helpful criterion. The lack of posting instructions does not prove a document *not* a letter. Further, the purpose of including posting instructions is precisely because the measure is addressed to an official, who can indeed carry out the instructions

¹¹⁹ Seeck, *RG* 176. Followed by Gaudemet (1982), who identifies Florianus in this text as governor of Belgica II at Beauvais (possible site of *CTh* 7. 20. 2). See further Ch. 10 Sect. i no. 4.

¹²⁰ Note, however, that 3 July was established as an annual celebration (*CIL* 1² p. 268: *fugato Licinio*); cf. the *ludi triumphales* for Licinius' final defeat in Sept. (*CIL* 1² p. 272).

¹²¹ Constantine received the surrender of Licinius at Nicomedia in Sept. 324, and was there periodically over the next year (Barnes, *NE* 76).

¹²² W. Williams (1975: 40–51), suggesting that the edict referred to itself as an epistle because of inadvertence in dictation; but he also cites three other edicts which use the second-person form of address (*FIRA*² i no. 81; *AE* 1948. 109, 1961. 24).

¹²³ *Eus. VC* 2. 24–42 and 2. 48–60.

contained. This is not an appropriate command for whole populations. It is true that Constantine's letter to Palestine ends with the phrase 'let this be posted up in our eastern territory,'¹²⁴ but this is hardly different from the instruction at the end of Fulvius Asticus' edict: *proponatur*. In both cases, an additional note for publication, that is not part of the text proper, has been preserved along with it.¹²⁵

This blurring between edict and general letter may explain the diplomatic confusion over Galerius' palinode (edict no. 26), which is given as an edict by Lactantius but as a letter to the provincials in earlier editions of Eusebius. Its epistolary status is further suggested by a reference in the text to 'another letter', implying that it is itself a letter. But in a similar fashion, Constantine refers to 'another letter' in his oral address to the veterans in 320.¹²⁶ In both cases therefore, 'another letter' may simply mean 'another communication that will be in letter form'.

Of course, the Theodosian Code itself shows the ambiguity of form, in that most of the headings, which are taken to denote edicts, do not use the word *edictum*, but simply say *ad populum/provinciales* in the manner of a letter. It is hardly possible to use the lack of a greeting in such instances as proof of status, since the preservation of clear epistolary phrases such as *X suo salutem* in undoubted letters is rare and erratic in our material. The difference between edicts and certain classes of letter is thus eroded.

A further problem arises, since it is also clear that one discrete act of the emperor may generate a number of documents. For instance, *adnotationes* are produced to accompany rescripts, and the letter to Caecilian was only one of a number of related documents (letter no. 60). The number of texts involved and their interrelationship is difficult to establish. The evidence is more suggestive than conclusive. As noted above, the imperial text may refer to further explanatory letters. Both the edict *de Accusationibus* and the acephalous edict from Crete refer to the officials to whom instructions are to be sent.

The edict *de Accusationibus* well highlights the confusions possible, since we possess what appears to be the same text in both edictal and epistolary format. The letter versions are only brief extracts, so that there is no way of comparing overall differences of form or content. In

¹²⁴ Eus. VC 2. 42.

¹²⁵ Cf. Julian, *Ep.* 21 (ed. Wright) to the Alexandrians, 380D and Val. III, *Nov.* 16. For an example from a lower administrative level, see P. Beatty *Panop.* 2. 97 (procurator, Aurelius Isidorus).

¹²⁶ See Ch. 10 Sect. i no. 4.

the epigraphic copies, the emperors state that *scripta* (with a second edict), containing the fullest information, have already been sent to a range of officials from the praetorian prefects down. Might it be this text that survives as a letter in the codes? This would imply, however, that the epistolary form of the *scripta* followed the wording of the first edict very closely. Certainly, the brief letter extracts in the codes give no indication that they represent a fuller or more detailed version, as the *scripta* in the epigraphic texts are described as doing. Indeed, had they done so, their explanatory nature might well have merited a heading describing them as texts *ad edictum* (see n. 5 above). Similar issues are also raised over the nature of the second edict (*aliud edictum*) that is mentioned. At the least, however, what is essentially the same document circulated in virtually identical words both as an edict for the population at large and as letters for officials.¹²⁷

Unfortunately, we do not possess complete texts in different formats as generated in the promulgation of an imperial act. Two dossiers provide some clues. First, in the Currency Decree (edict no. 10), we have at least two documents with a number of verbal echoes, plus a possible reference in the first to a communication sent to the *rationalis* (the second text?). These similarities are deceptive. Although both documents are part of an overall retariffing, each appears to deal with different denominations of coins and they are thus not describing an identical measure. This still suggests, however, that the composers of the texts were content to issue synchronic documents containing considerable verbal repetition. Secondly, the Orcistus inscription preserves what may be the end of an imperial *adnotatio* or other communication to the city plus a letter to Ablabius as vicar. Since the first document is mostly lost it is impossible to assess the full extent of the correlation, but the surviving overlap between the texts reveals near-identical wording.¹²⁸

The question can go further than this. Why are epigraphic copies sometimes letters, sometimes edicts? Of course, it is not clear who was responsible for every inscription, but most of our examples probably reflect the actions of officials. Thus, in some cases they publish the imperial edict, often with an edict of their own, although one presumes

¹²⁷ The codes of course preserve extracts as addressed to an official. This may imply that an edict, sent to an official, although lacking any greeting or second-person address, might be recorded as being *ad X* simply on account of the direction of transmission.

¹²⁸ See the note at the end of App. F, Table A, for quotations from the relevant passages.

that they must have received some form of covering letter from the emperor. In other cases, it is the letter from the emperor to the governor that is set up. For instance, if an imperial edict lies behind the Brigetio tablet letter, why was the edict itself not published, especially as the letter contains the publishing instructions? The copy which we possess must have been created to fulfil those instructions. If the enactment existed in edict form, it was not apparently sent to the governor in question. The edict *de Accusationibus* and the anonymous Cretan edict both talk of letters to various officials as the source of detailed information about the measures concerned, yet it was not the letters but the edicts which were inscribed.

It is only much later that we can see clearly how this system of promulgation developed. Thus, in the Theodosian Code, a letter of 414 addressed to the praetorian prefect Anthemius is followed by this note:

de eadem re scribturn edictum ad populum: ad Marcianum com(item) s(acrarum) l(argitionum): Musellio praeposito sacri cubiculi de titulis ad domum sacram pertinentibus: ad rectores provinciarum: et de metallariis edictum ad populum per provincias Illyrici et ad rectores provinciarum.¹²⁹

There was written on this same matter an edict to the people; to Marcianus, count of the sacred largesses; to Musellius, chamberlain of the sacred bedchamber on the titles relevant to the sacred household; to the governors of the provinces; and on the mineworkers, an edict to the people of the provinces of Illyricum, and to the governors of those provinces.

This shows how one single act of legislation generated both edicts and letters to officials, with versions edited to include only appropriate matters for particular recipients or areas. This provides the basis for understanding the curious relationship between edicts and letters in our material. A single law may lie behind many edicts and letters. This can be seen developing in the tetrarchic period, especially through texts addressed to the praetorian prefect, exactly as with the later, fifth-century example above. The civil administrative role of the prefects was expanded and clarified in the late third/early fourth century. Letters to praetorian prefects are very common in *CTh* after 324, while instructions ordering them to disseminate the imperial will by letter or edict to governors and the population at large are preserved in many of the fuller versions of laws among the Sirmondian constitutions and the

¹²⁹ *CTh* 11. 28. 9; cf. *CTh* 1. 8. 1 (415), 6. 28. 8 (435), 8. 4. 30 (436), Theod. II, *Nov.* 7. 4 (441), 26 (444), Marcian, *Nov.* 2 (450), and *CJ* 1. 1. 4 with Krüger, *ad loc.* n. 7 (452).

Novels.¹³⁰ Such promulgation of imperial pronouncements through their agency can already be seen developing in our material. Two examples are controversial. The identification of the Maximus who received the edict *de Accusationibus* as Licinius' prefect is uncertain.¹³¹ *FV* 35 shows the prefect transmitting an imperial text to the *corrector* of Picenum, but is of uncertain date. But two even earlier examples can be cited. The first is the letter to the prefects from Diocletian.¹³² More significant is the part played by Sabinus in disseminating Maximinus' will to lower officials in 311 and 312.¹³³ Prefects are also found writing to the vicar of Africa and ordering the painting of imperial portraits.¹³⁴ What this demonstrates is a shift in the direction of government. No longer is it just a matter of 'petition and response', even though that itself may generate more than a single imperial document. Whatever may prompt a particular act of legislation,¹³⁵ it is now issued and promulgated in an active fashion.

The division in the material should come to be, not that between letters and edicts, but between the letters and edicts that form part of a general enactment and those letters which are rescripts in reply to officials.

And finally, what are the implications of this for the palatine secretaries? We have already considered the *magister libellorum*, and noted that rescripts with *adnotationes* may have required co-operation with the *magister memoriae*.¹³⁶ Did the *magister epistularum* maintain a position with regard to all *epistulae*? It seems possible that he would still answer *consultationes*, but not deal with more general letters/edicts. No official is attested as responsible for edicts under the principate,¹³⁷

¹³⁰ *Sirm.* 2, 9, 10, 11, 12, 14, 16, and almost all the 5th-cent. novels and those of Justinian (usually in the last section of the text). A typical example is Theod. II, *Nov.* 7. 2. 3 addressed to the praetorian prefect Cyrus in 440: *Illustrius itaque et magnifica auctoritas tua legem saluberrimam edictis propositis ad omnium notitiam perferri praecipiat*. This type of phrase is usually edited out by code compilers, as in the parallel though rather complex composite text *CJ* 3. 23. 2.

¹³¹ As is the identification of the Probus who received *CTh* 4. 12. 1 and *CJ* 6. 1. 3, as praetorian prefect of Licinius (see Ch. 11 Sect. ivc).

¹³² *CJ* 10. 42. 10 (letter catalogue, no. 43).

¹³³ Letter catalogue, nos. 54 and 57, and edict catalogue, no. 30; cf. letters of Maxentius' prefect ordering restoration (letter no. 52).

¹³⁴ Optatus, *App.* VIII (314) and *P. Oxy.* 3791 (318).

¹³⁵ There is little evidence for *suggestiones* from below in our material (cf. letter no. 41); but note the example of Hosius in Ch. 6 Sect. iv. *Sirm.* 1 was a rescript, but also intended as a general permanent law by the emperor. Did Ablabius just use it for the situation that caused him to contact the emperor, or was it more generally promulgated?

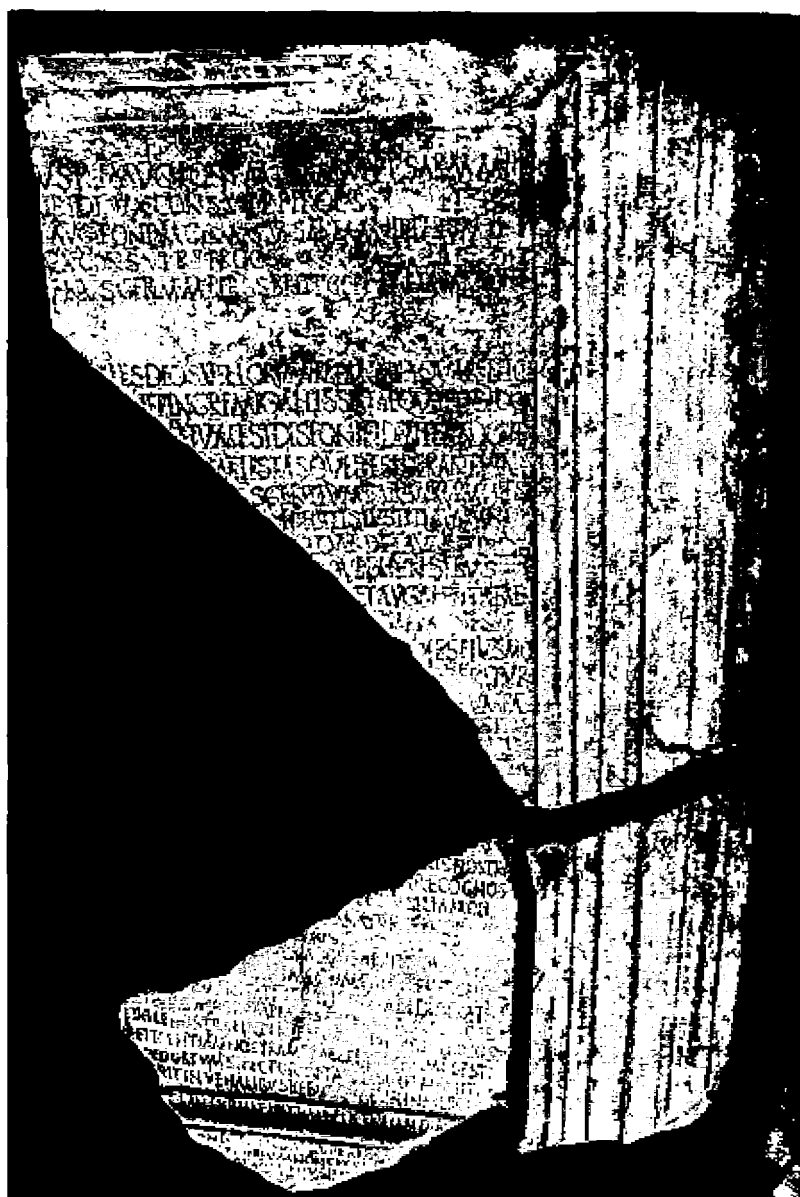
¹³⁶ Ch. 3 Sect. v, letter no. 10, and Ch. 4.

¹³⁷ Millar (1977: 253, 258).

perhaps because they tended to be relatively rare. The role of the quaestor in relation to legislation (and even that, not clearly defined, *vis-à-vis* the *scrinia*) belongs much later in the fourth century.¹³⁸ Perhaps, if we need to choose any one official as chiefly involved with general pronouncements at this time of transition, it was the *magister memoriae*.¹³⁹ Nevertheless, areas of competence were probably ill defined. Thus, a single act of the emperor might not only generate multiple copies of documents with different formats and/or content, but also create a complex of roles for the *magistri scriniorum*.

¹³⁸ On the quaestor, see Harries (1988).

¹³⁹ As presumed by Liebs (1987: 35) and Honoré, (*EL*² 155); more cautious is Peachin (1989: 176 n. 26). For the *magister's* involvement later in the 4th cent., see Harries (1988: 160–3) and Peachin (1989: 197–208). For the prosopography of *magistri memoriae* in our period, see *ibid.* 175–7. Eumenius, *magister* with Constantius I, talks of his voice as *caelestia tamen verba et divina sensa principum prolocutam* (*Pan. Lat.* 9(4). 6. 2).



6 Diocletian's Prices Edict (AD 301). Part of the imperial titles and preamble from Aphrodisias (Roueché 1989: 266–8)

The Prices Edict

I INTRODUCTION

The Prices Edict is the longest and most ambitious of surviving tetrarchic legislative measures. As such, it merits a chapter to itself, though it should also be seen in the context of other pronouncements. This chapter sets out to answer various questions: why was it issued, how was it compiled, where was it enforced? These all reflect upon the attitudes and effectiveness of the government.

In the midst of his fierce attack on the misrule of Diocletian, Lactantius gives the following account of a price-fixing measure:

Idem cum variis iniquitatibus immensam faceret caritatem, legem pretiis rerum venalium statuere conatus est; tunc ob exigua et vilia multus sanguis effusus, nec venale quicquam metu apparebat et caritas multo deterius exarsit, donec lex necessitate ipsa post multorum exitium solveretur.

When he (Diocletian) had caused great inflation through his various misdeeds, he tried to establish a law on the prices of goods for sale; and then much blood was spilt over small and cheap items, while out of fear no goods appeared for sale and the inflation raged all the worse, until at last after the destruction of many people the law was of necessity repealed.¹

The emperor is shown as causing problems both through his misdeeds and through his ineffective remedies. The impact of this *lex* on the mind of Lactantius is revealed by the fact that, in his chapter describing Diocletian's manner of government, it is the only specific rather than general measure that is discussed.

The impact of the law in the epigraphic remains is also considerable.² Fragments on stone have been found in almost forty different locations, mainly in the east. This has enabled the near-total reconstruction of the edict, both preamble and tariff-list. Thus we are in a position to appreciate the scale of the enactment and also possess the imperial self-justification to set against the testimony of Lactantius.

¹ *DMP* 7. 6 7.

² Giaccherio (1987: 132) calls the edict the *regina inscriptionum*.

II DATE AND PLACE

The date of the edict can be fixed with some precision. The Egyptian copy of the preamble gives Diocletian's years of tribunician power and imperial salutations each as *XVIII*.³ The iteration of these two titles only coincided for a brief period each year. Thus the emperor entered his eighteenth imperial year on 20 November 301, but became *trib.pot.XIX* on 10 December.⁴ It is also likely that the edict should post-date the Currency Decree(s), which came into effect with some doubling of coin values on 1 September 301 and may be reflected in the subsequent Prices Edict tariff, where the prices seem to presume a smallest coin valued at not one, but (doubled to?) two *denarii*. The obscure relationship between the two enactments and the coins and prices is discussed below (Sections iv and vii).

The edict is prefaced by the full imperial titles of all four tetrarchs with *dicunt*, the standard edictal opening formula. But following Lactantius' attribution of the measure to Diocletian, there is no reason to doubt that the measure emanated from the court of Diocletian. This seems to have been based in Antioch from 299 to 301.⁵ The emperor is attested in Antioch in July 301.⁶ He appears to have spent the winter in Egypt, being in Alexandria on 31 March 302.⁷ A corrupt subscription places him impossibly at Joppa on 22 November 303, which Barnes suggests could be emended to give November 301.⁸ Since the corrupt date has the Augusti as consuls, it seems more likely that the correct date should be another such consular year, perhaps 299. Nevertheless, if Diocletian cannot be precisely located in November/December 301, or even if we reject the Egyptian heading as spuriously accurate,⁹ we can still say that the edict must have been issued either at Antioch, or at Alexandria, or somewhere in between. The presence of Alexandria at the head of the list of sea-journeys in the tariff might possibly indicate that the emperor was already in that city at the time of promulgation, although Alexandria's commercial pre-eminence would justify its primacy on that count alone.

³ *PEaph pr.* 3 and 5 has *trib. pot. VX* for both Diocletian and Maximian, with no *imp.* iteration (see Pl. 6). The Egyptian copy is more likely to be reliable, since it was probably carved when the emperor was present in Alexandria, though if there was any delay in carving, the titles may represent those at the time of carving rather than at the time of the original issue of the measure.

⁴ *Ibid.* 55.

⁵ *CJ* 3. 28. 25.

⁶ *Coll.* 15. 3.

⁷ *CJ* 3. 3. 4 (letter no. 40). See Barnes, *NE* 55 n. 40.

⁸ Barnes, *NE* 19, 25.

⁹ Crawford (1975: 579 n. 77) rejects the precise dating, which renders the chronological sequence of the Currency Decree(s) being followed by the Prices Edict at least open to question.

III THE PREAMBLE

The preamble is a long and complex piece of writing, in what may be described as an 'Asian' style.¹⁰ By constant repetition, reduplication, and strong emotive language, the edict seeks the approval of the reader. Statements and moral observations are made which presume a set of assumptions shared with the audience, lining them up on the emperors' side against the evils (and evil men) they are trying to repress. This task is the more difficult since the wrongdoers are within the system. This contrasts with the situation against which the rhetoric of the Damascus incest edict or the letter on the Manichees is directed, where the spectre of barbarity and Persian vice, innovation, and abandonment of traditional Roman ways can be invoked.

The preamble is the most striking example of the high rhetoric of late imperial pronouncements, although even within our material its scale is unmatched. Among those of our documents which survive more or less intact, some contain an explanatory or apologetic preface. I have already quoted that from the Brigetio Tablet (see letter no. 53) and others can be found in the Manichees letter, *FV* 35 and 249, the Damascus edict, and the *edictum de Accusationibus*. But as will be seen, these introductory paragraphs are insignificant when compared to the preface of the Prices Edict preamble, which occupies two-thirds of the text. It is fitting that one of the most ambitious tetrarchic measures should be accompanied by an edictal composition on such a scale. As an example, then, of imperial rhetoric, I wish to give an exposition of the content of the preamble.

The edict's long opening sentence contains a vision of the world at peace: *tranquillo*¹¹ *orbis statu et in gremio altissimae quietis*¹²

¹⁰ The preamble has seldom been fully treated. It is ignored in both the commentary of Blümner and Mommsen (1893) and that of Lauffer (1971). A brief account of the preamble is given by Bravo Castañeda (1980: 243–7), who divides the matter into three parts: general situation, the imperial motives, and the solutions. Rolfe (1902) describes the language as essentially classical, but this article is unfortunately only a summary of a longer paper, which I have been unable to trace. The rhetoric of the preamble clearly reflects the tastes of imperial officials like Arcadius Charisius; thus compare *effrenata livido rapiendi* at *PE* pr. 69–70, with *D* 22. 5. 1. 2, *effrenata potestate*, and *CJ* 9. 9. 21, *effrenata licentia* (see Honoré, *EL*² 161).

¹¹ Compare *Coll.* 15. 3 (Mar. 302, only four months later): *Romanam gentem modestam atque tranquillam et universum orbem nostrum et tranquillitatis nostrae*. This period of peace may also be the background to a possible tetrarchic panegyric (*Corpus Hermeticum*, *Treatise XVIII*; see Scott 1925: 462). But note, in contrast with these reasonable boasts of peace in 301/2, the purely formulaic language in Dec. 294 at *CJ* 2. 17. 4: *invidiam fiscalem contra saeculi nostri tranquillitatem implorari non decet*. Lactantius, of course, turns imperial rhetoric on its head. Thus *ademptis omnibus adversariis, restituta per orbem tranquillitate* refers to the ending of the persecution (*DMP* 1. 2).

¹² The reverse legend *Providentia Deorum Quies Augustorum* and variants thereof are

locato ('the peaceful state of the world seated in the lap of a most profound calm'). The *aestuantes... rapinas gentium barbararum* ('seething ravages of the barbarian peoples') have been repressed with much sweat (presumably military sweat) and divine approval. *Honestum publicum et Romana dignitas maiestasque* ('public decency and Roman dignity and majesty') demand that the peace founded for eternity (*in aeternum fundatam quietem*) should be buttressed.¹³ Yet there is still something monstrous abroad in the empire: the spiralling inflation and uncontrolled greed of which all are aware. The language used to describe this is precisely that appropriate for a raging barbarian enemy, wild, frenzied, monstrous, inhuman, with a perverted religion: *nullo sine fine proposito ardet avaritia desaeuens, quae sine respectu generis humani... ad incrementa sui et augmenta festinat* ('with no limit set there burns a raging greed, which hastens to its own growth and increase without respect for human kind'); *gliscentis avaritiae ac rapidis aestuantis ardoribus velut quaedam religio apud inprobos et inmodestos existimatur in lacerandis fortunis omnium necessitate potius quam voluntate destitui* ('among the wicked and shameless it is considered just like some religion of greed, growing and seething with fierce eagerness, that they should cease from harming the fortunes of everyone more out of necessity than their own wish').¹⁴

Greed is a motive everyone can understand. Lactantius includes greed and avarice as a notable part of the tetrarchic maladministration practised by Diocletian, Maximian, Galerius, and Maximinus, and indeed the cause of the inflation the edict seeks to curb. Thus it is Diocletian's greed that gives rise to the Prices Edict itself. In the

used on coins of the *Seniores Augusti* from all mints to describe the state of retirement for Diocletian and Maximian after their abdication in 305; e.g. *RIC* vi. 208 (Trier), 364 5 (Rome), and 623-5 (Antioch). Diocletian also seeks to promote divine favour through a life that is *pia religiosaque et quieta* (*Coll.* 6. 4. 1). Constantine uses *quies* appropriately of veteran retirement (*CTh* 7. 20. 2) and sees gladiatorial games as detracting from *otio civile et domestica quiete* (*CTh* 15. 12. 1). The edict of Milan sees its provisions as serving *quies publica* (Lact. *DMP* 48. 11).

¹³ This is all in the first sentence, *PE* pr. 16-24. Tetrarchic coin legends include *pacatores gentium* and *pax aeterna* (*RIC* vi. 171, Trier; the former showing the emperor in a triumphal quadriga), *securitas orbis* (*RIC* vi. 173, Trier). Constantine later uses *debellatori gentium barbarorum* (*RIC* vii. 195, 215-16, Trier).

¹⁴ *PE* pr. 26-30, 38-41; cf. 34-5, *detestandam immanitatem*. Constantine compares some punishments meted out by cruel masters to the savagery of the barbarians: *saevitia immanium barbarorum* (*CTh* 9. 12. 1). He also describes the greed of both barbarians and lawyers by the same word, *depraedationes* (*CTh* 7. 1. 1, *CJ* 2. 6. 5).

sentence immediately before that quoted earlier in this chapter, Lactantius says of Diocletian:

Idem insatiabili avaritiae thesauros numquam minui volebat, sed semper extraordinarias opes ac largitiones congerebat, ut ea quae recondebat integra atque inviolata servaret.

With his unquenchable greed, he was never willing that his treasures should grow less, but ever heaped up surplus wealth and largesses, so that he might keep intact and untouched what he had hidden away.¹⁵

Emperors, too, find it an easy vice to identify as a prime motivation to wrongdoing. In one rescript, Diocletian talks of the governor avenging *turpis lucri cupiditatem*,¹⁶ and elsewhere tells a petitioner for liturgical immunity that he is a slave to *avaritiae caecitate*.¹⁷ Eusebius considered Constantine too generous, feeding the greed of the unworthy.¹⁸ That emperor, however, admonished courtiers and officials for this failing,¹⁹ as well as criticizing the greed of those who tried to keep hold of the freeborn illicitly enslaved under Maxentius.²⁰ The greed of the *Caesariani* is consistently deplored by emperors.²¹

An appreciation of greed as the important motivating vice is exaggerated to the level of caricature in the preamble, where *avaritia* alone occurs eight times²² and the composers employ many elaborate ways to describe greed in the most pejorative terms possible. In opposition to this are the qualities of the emperors and the presumed naturally right-thinking majority; *ratio*,²³ *humanitas*,²⁴ and terms implying *providentia*.²⁵

The emperors set out their own role clearly enough. They are the *parentes generis humani* who employ the *remedia provisionis nostrae*

¹⁵ DMP 7. 5; cf. 37. 4, where the actions of Maximinus cause *caritas inaudita*.

¹⁶ CJ 9. 9. 23, cf. 9. 9. 24 and Coll. 6. 4. 3 on sexual lust. But note an approving usage, *gloriae cupiditas* (CJ 10. 44. 2), and an appreciation that wealth increase is a worthy aim for the poor: *nec enim pauperibus industria vel augmentum patrimonii, quod laboribus ac multis casibus quaeritur, interdicendum est* (5. 51. 10).

¹⁷ CJ 10. 42. 6; cf. PE pr. 57 (*animorum caecitate*). Note also CJ 4. 33. 4 (*praecipiti avaritia*).¹⁸ VC 4. 54.

¹⁹ VC 4. 30 (courtier); CTh 1. 16. 3 (*iudices*), 4. 13. 3 (*stationarii et al.*).

²⁰ CTh 8. 5. 1. ²¹ See edict catalogue, no. 18.

²² PE pr. 27, 38, 85, 88, 113, 121, 140, 151.

²³ PE pr. 30, 85, 99, 127, 131. For *ratio* in the private rescripts, see Honoré, *EL* 125 n. 275; 135 nn. 372, 375.

²⁴ PE pr. 46, 53, 65, 85, 107; plus *humanus* at 28, 44, 98, 132; cf. *inhumanitas* at 58. For imperial *humanitas* (= Greek *philanthropia*), see edict catalogue, no. 18; in private rescripts, FV 281 and CJ 5. 62. 23.

²⁵ *Providere* occurs at PE pr. 86, 121, 149, and *provisio* at 47; cf. *prospicere* at 44 and *prospectio* at 50. This is of course a topos of imperial texts.

to solve the problem. But they make it clear that the problem is of long standing and that through their restraint in not acting, they have waited almost too long:

paene sera prospectio est, dum hac spe consiliis molimur aut remedia inventa cohibemus, ut—quod expectandum fuit per iura naturae—in gravissimis deprehensa delictis ipsa se emendaret humanitas

our foresight is almost too late, while we were devising our plans and keeping back the remedies discovered in this hope, that (as was to be expected according to the laws of nature), caught in the most serious crimes, humanity would itself change its ways²⁶

Ad remedia igitur iam diu rerum necessitate desiderata prorumpimus et securi quidem querellarum, ne ut intempestivo aut superfluo medellae nostrae interventus vel apud improbos levior aut vilior aestimaretur, qui tot annorum reticentiam nostram praecepticem modestiae sentientes sequi tamen noluerunt.

So now we hasten to the solutions so long required by the necessity of the situation, secure indeed from complaints that our considered intervention is untimely or unnecessary, or deemed lightweight or frivolous by the wicked, who could see that our silence of so many years was a model of restraint and were unwilling to follow it.²⁷

The emperors seek to disarm criticism of their action as excessive by emphasizing their long-exercised patience and the heedlessness of those who could have reformed but did not do so. How genuine is this bashfulness, this desire to appear forced to act, rather than as premature meddlers? Certainly a need for apologia is present. However, that the edict did in truth have a lengthy gestation period is plausible. If we accept its promulgation as late in 301, it must already have been in prospect before the currency reform, which was promulgated on or before 1 September (Section iv below). Indeed, the process of planning and composition should be seen against the prolonged residence of the court at Antioch (Section v below).²⁸ Thus, if any perspective is to be found in the tariff-list it is one based on Antioch.

The emperor goes on to pose a rhetorical question:

Quis enim adeo obtumsi pectoris et a sensu humanitatis extorris est, qui ignorare possit, immo non senserit in venalibus rebus . . . in tantum se licentiam diffusisse pretiorum, ut effrenata livido rapiendi nec rerum copia nec annorum ubertatibus mitigaretur?

²⁶ *PE pr.* 50–3.

²⁷ *Ibid.* 59–64.

²⁸ Julian, also in Antioch, only waited three months before imposing his price controls (Julian, *Misop.* 368D).

For who can be so blunt of spirit or such a stranger to human feeling, that he cannot know, indeed cannot perceive that in the sale of goods . . . a free rein in prices has spread so far that an unbridled lust for gain is lessened by neither abundant goods nor fruitful years?²⁹

Inflation is thus supposed to be obvious to everyone. The text continues by describing the greed of those who, despite already great wealth, begrudge abundance and seek their own profit in shortage, even desiring control of the weather.³⁰ This section ends with a direct address to the emperors' audience, who are thus defined in the vocative:

eorum avaritiae modum statui, provinciales nostri, communis humanitatis ratio persuadet.

the common reason of humanity urges, our provincials, that a limit be set to their greed.³¹

Concrete examples of the results of this profiteering are now provided as the reasons for the action hitherto delayed. Who does not know (*quis ergo nesciat?*) that the typical victim of the inflation is the soldier? In towns and villages, even on the road, prices that are more than eightfold swallow his wage and donative together in a single purchase.³² The emperors' view is not unreasonable. Any group on fixed money income suffers most during times of inflation. This would be especially true for those paid in debased currency, since prices in the debased currency spiral precisely because it is debased. Gold, by contrast, tends to hold its value. The edict does not overvalue gold coin, since gold is tariffed at the same maximum whether in bars or coin.³³ The Panopolis Papyri show that in 299–300 pay and donatives were being disbursed to soldiers in base, not precious metal, coinage.³⁴ Soldiers are therefore not a bad example to use in terms of economic

²⁹ *PE pr.* 64–71. This passage opens with a standard rhetorical device appealing to the sensibilities of the audience; cf. Maximinus' rescript to Tyre at *Eus. HE* 9. 7. 8, and a famous earlier use by Dido at Virgil, *Aen.* 1. 567.

³⁰ This might be no idle exaggeration. Sopater was executed on a charge of binding the winds to delay the corn fleet reaching Constantinople (*Eunapius, V. Soph.* 363). Maximinus claimed that the godlessness of the Christians threatened famine and storm in contrast to the plenty and mild weather that result from proper veneration of the gods (*Eus. HE* 9. 7. 8–10), and Eusebius delights in pointing out that the renewed persecution that accompanied this imperial rescript in 312 had exactly the opposite effect to that intended and led to drought, famine, and plague (*HE* 9. 8. 1–12).

³¹ *PE pr.* 84–5.

³² *Ibid.* 92–100.

³³ *PEAet.* 28. 1a. See Crawford and Reynolds (1979: 164, 197). But note that silver coin is overvalued by 60 per cent (Hendy 1985: 450–1).

³⁴ *P. Beatty Panop.* 2. 161–95 (donatives for accession and birthday of Diocletian on 20.11 and 22.12.299), 2. 291–8 (pay and *annona* costs 299/300), 2. 266–70 (donative for

reality. In addition, although the text nowhere refers to complaints or petitions presented to the emperor about prices, nevertheless, since soldiers enjoyed easier access to the emperor than most other groups, such petitions may well lie behind the imperial description in this section.³⁵ The imperial perspective views soldiers positively: their good is demanded by *communis omnium salus*,³⁶ and it was presumably the soldiers' sweat that gained the peace described in the edict's opening.

Whether the public addressed in the edict would have sympathy with this attitude and the soldiers' plight is another matter. Malalas records friction between soldiers and traders in Antioch, while Alexandria had only recently suffered from its bloody conquest by Diocletian in 298.³⁷ However, perhaps even civilians could appreciate that dissipating the taxes that went to support the armies (*omnem totius orbis ad sustinendos exercitus collationem*) was not to their own advantage.

Having thus described the problem, the emperors at last state what action they are taking. They are not going to fix prices, as this would hinder the benefit of cheap goods in times of plenty,³⁸ but only set a ceiling (*modum statuendum*)³⁹ to greed. And so the emperors declare:

avaritia . . . statuti nostri finibus vel moderaturae legis terminis stringeretur. Placet igitur ea pretia, quae subditi brevis scriptura designat, ita totius orbis nostri observantia contineri, ut omnes intellegant egrediendi eadem licentiam sibi esse praecisam, non impedita utique in his locis, ubi copia rerum perspicitur aflueri, vilitatis beatitudine, cui maxime providetur, cum praefinita avaritia compescetur.

greed . . . may be held in check by the bounds of our statute and the limits of the restraining law. Therefore it is decided that those prices which the text of the attached list sets out, be thus kept and observed by our entire world that all may know that licence to exceed them has been denied, but without hindering the blessing of low prices in those places where an abundance of goods is known to be in supply, since especial thought has been taken for this, when greed is stopped and suppressed.⁴⁰

It is also forbidden to take goods elsewhere to charge a higher price, to use transport costs as an excuse for price increases,⁴¹ for the buyer and

third consulate of the Caesars on 1.1.300). For military pay lagging behind inflation, see Duncan-Jones (1978: 550-1; also 1990: 116-17).

³⁵ See Ch. 5 Sect. iib. ³⁶ *PE pr.* 94.

³⁷ Malalas 12. 307 and 309; Eutropius 9. 23.

³⁸ This appreciation of price variability, depending on place and time of year, is also reflected in a law of Constantine on the pork supply for Rome, *CTh* 14. 4. 2; cf. 14. 4. 3 for price differences between Rome and Campania. ³⁹ *PE pr.* 111-12.

⁴⁰ *Ibid.* 113-22.

⁴¹ The tendency to seek greater profits by exporting outside one's home market lies

seller to collude in circumventing the law, or for anyone to withhold goods from sale altogether. All loopholes are thus theoretically closed off. And a capital penalty is prescribed for any infringement at all, such severity being justified, since avoidance is easy for those who observe moderation.

The preamble ends with an exhortation to obedience to the law:

Cohortamur ergo omnium devotionem, ut res constituta ex commodo publico benignis obsequiis et debita religione teneatur, maxime cum eiusmodi statuto non civitatibus singulis ac populis adque provinciis, sed universo orbi provisum esse videatur, in cuius perniciem pauci atmodum desaebisse noscantur, quorum avaritiam nec prolixitas temporum nec divitiae, quibus studuisse cernuntur, mitigare aut satiare potuerunt.

Therefore we urge all our devoted people to keep with positive obedience and due respect the measure established for the public good, especially since this can be seen to have been provided not for individual cities, peoples and provinces, but for the whole world, towards whose ruin a few people are known to rage greatly. Neither length of time nor the riches, for which they are seen to be so eager, can lessen or satisfy their greed.⁴²

Such is the rhetoric of the preamble.

IV PRECEDENTS

What sets apart the prices edict from all previous economic interference by the Roman government is its scale. Price control on wine is attested as far back as 89 BC⁴³ and maximum prices had been set on various goods by Tiberius, Nero, and Commodus.⁴⁴ There is also legislation directed against speculators, the *dardanarii*, who hoarded or charged exorbitant prices.⁴⁵ But price regulation is not common and occurs only for specific crises in limited areas, which for early Roman emperors tends to mean Rome itself.

Some of Diocletian's private rescripts concern matters of price. His rulings on rescission for *laesio enormis* have been seen as introducing

behind the restrictions of Hadrian's oil law for Athens (Garnsey 1988: 75. 6; the law, SEG 15. 108, is given in trans. at Meijer and van Nijf 1992: 114-15).

⁴² PE pr. 145. 53; cf. the conclusion of FV 35 (letter no. 70).

⁴³ Pliny, NH 14. 95.

⁴⁴ These cases are discussed by Garnsey (1988: 222 no. 10 (Tiberius), 224 no. 15 (Nero), 226 no. 21 (Commodus); see also 227 no. 23 (Severus Alexander's refusal to reduce prices by direct intervention)).

⁴⁵ See Herz (1988: 179-80).

a new solution to cope with problems arising from extreme inflation, where delays over sale may render an agreed price inadequate.⁴⁶ But the main texts adduced only allow such rescission where the price is half of a *iustum pretium*, presuming an inflation rate of 100 per cent per annum far greater than any rate plausible for the reign of Diocletian.⁴⁷ Thus, Diocletian did not introduce rescission for *laesio enormis* in response to rampant inflation. There is concern, however, to rectify more unexceptional cases of fraud, deception, or coercion in individual financial transactions.⁴⁸ By contrast, the rhetoric of the preamble is directed against personal greed as an empire-wide epidemic and does not claim to set a *iustum pretium* (although that is the interpretation given to the measure by Fulvius Asticus, edict 11a and Section iv below).

There is thus no comparable precedent for the edict in classical law or the actions of earlier emperors. Imperial manipulation of coinage was of course quite common, indeed debasement by emperors was the principal problem in the economy, mainly because the emperors themselves showed lack of confidence in their non-precious coinage. Recent study shows that most fourth-century inflation is not genuine inflation, but jumps precisely in accord with imperial changes to the coinage.⁴⁹ Diocletian had already reorganized the coinage c.294.⁵⁰ Stability did not follow. Thus came the Currency Decree(s), effective from 1 September 301, fixing the value of the silver *argenteus* at 100 *denarii* (an overvaluation), while tariffing two other coins (probably the *nummus* and the *radiata*) at twenty-five and four *denarii* respectively. At least one of these values represents a doubling. The details of this remain unclear, because of the fragmentary nature of the epigraphic text. By treating coins differently in the retariffing, the emperor may have hoped to increase the purchasing power of the coins and thus render existing prices more affordable, while avoiding a straight inflationary leap

⁴⁶ Thus Visky (1969) and Klami (1987).

⁴⁷ *CJ* 4. 44. 2 (285) and 4. 44. 8 (293). See Sirks (1983, 1985, and 1992), arguing against anachronistic retrojection of the doctrine of *laesio enormis*. The *iustum pretium* interpolated into *CJ* 4. 44. 8 seems to mean the highest bidding price.

⁴⁸ e.g. *CJ* 2. 36. 3, 4. 46. 2, 5. 18. 6, 5. 71. 10–11, 7. 39. 1. Note that Diocletian's 'post-classical' *magister libellorum*, Arcadius Charisius, seems to adopt the doctrine of a *iustum pretium*, in contrast to Gregorius and Hermogenian, whose texts (cited in the previous note) only contain the idea as the result of interpolation (Honoré 1994: 172).

⁴⁹ Bagnall (1985).

⁵⁰ On the reorganization of the coinage, see *RIC* vi. 1–2, 93–4, and Hendy (1985: 449). Note also that the Greek tetradrachms of Alexandria came to an end c.297, while the mints were restructured during the 290s (Hendy 1985: 278–80).

(i.e. double coin values = double prices).⁵¹ I do not think, however, that keeping the smallest coin (1- or 2-denarius?) at the same level (if indeed that happened) would provide any stability: the small laureate identified as the *denarius* is too rare to provide this stabilizing factor, indeed it almost entirely disappears after this date. Thus, whatever was done to the gold/silver ratio, any tampering with the base-metal coins would simply be answered by an equivalent price rise. Further, the apparent attribution of all inflation to greed makes any sophisticated economic thinking unlikely. Instead, the emperor may have intended enabling the administration to make enforced purchases of gold (and other state transactions) for even fewer base-metal coins than before. However, if soldiers' pay remained the same, with fewer coins at greater nominal value, their plight as depicted in the preamble may in part be a deterioration as a result of the Currency Decree, if prices did indeed respond to the coin adjustment by simply increasing in appropriate ratios.

The connection between the currency reform and the Prices Edict is uncertain. The rhetoric of the edict preamble implies that the original idea for price control may have arisen further back than the revaluation. But the edict never alludes to coinage retariffing, which may mean that these measures are not exactly contemporary as parts of a single economic package. The two are, however, mentioned together in a papyrus.⁵² At some point they coexisted. Thus, the Prices Edict should either have been issued shortly after the currency reform to reinforce the new coin values, or else within a few months when it was clear that the retariffing had not stemmed inflation (i.e. the greedy had not reformed themselves), thus necessitating the most drastic action envisaged: a comprehensive price ceiling.

V DIOCLETIAN AND JULIAN IN ANTIOCH

I think that a good picture of the circumstances surrounding the origin of the Prices Edict can be found in parallels with the sojourn of Julian at Antioch in 362-3.⁵³ The greater wealth of sources for Julian's actions allows an appreciation of the Antiochene background which we largely

⁵¹ Thus Ermatinger (1990: 46).

⁵² PSI 965. See Ruschenbusch (1977: 208).

⁵³ For the most recent account of this, see J. F. Matthews (1989: 409-13, plus bibliography on p. 540 n. 6), to which can be added Giacchero (1980) and Herz (1988: 334-7).

lack for Diocletian. But the large number of echoes between Julianic and Diocletianic material may reasonably be used to fill out our view of Antioch in 299–301.

Julian arrived in Antioch in July 362 in preparation for his Persian campaign. According to his own account, the people complained to him of abundant goods but high prices.⁵⁴ Having urged the local notables to control their desire for unjust profit, he waited three months without doing anything further, giving them opportunity to put the situation to rights by themselves.⁵⁵ His self-justification thus closely resembles that of the Prices Edict preamble, where also the inflation is not viewed as the result of shortage, but due to a greed that the emperor has long waited to reform itself. Libanius also rebukes the rich Antiochenes for failing to counter the story that they were disappointed at a time of glut and rejoiced at shortage,⁵⁶ which is precisely Diocletian's view of the culprits in the preamble.

Only after three months did Julian at last act and institute fair prices for all goods.⁵⁷ He called together farmers, artisans, shopkeepers, and all connected with price-fixing, and forced them by law to charge moderate prices, thus instituting a second prices edict.⁵⁸ Ammianus and Socrates both consider that the action was done for no good reason,⁵⁹ but out of a desire for popularity, while Socrates goes further by stating that the price problem was a direct result of the massive influx of soldiers with the emperor.⁶⁰

Immediately, just as Lactantius reported for the Prices Edict, goods disappeared off the market, traders stopped trading or left the city.⁶¹ A more specific aspect of this situation was that there were also complaints of a poor harvest and therefore a corn shortage, exacerbated by the normal instinct of the rich to hoard, or keep hold of existing hoards, in such crises.⁶² Julian bought in corn from neighbouring and more distant places and fixed a low price, but since there was no rationing, this corn disappeared into the stocks of the rich.⁶³ Thus Julian's efforts

⁵⁴ Julian, *Misop.* 368C (cf. Sozomen, *HE* 5. 19. 1).

⁵⁵ *Ibid.* 368C–D.

⁵⁶ Libanius, *Or.* 16. 25.

⁵⁷ Julian, *Misop.* 369A.

⁵⁸ Libanius, *Or.* 18. 195. This measure is called *edictum de pretiis* by Giacchero (1980: 476).

⁵⁹ The similarity in the criticisms by Ammianus and Lactantius is the only point of comparison between the two situations emphasized by Giacchero (1980: 480–1).

⁶⁰ Ammianus 22. 14. 1; Socrates, *HE* 3. 17. Libanius is critical at *Or.* 1. 126.

⁶¹ Libanius, *Or.* 15. 21; Socrates, *HE* 3. 17; Sozomen, *HE* 5. 19. 2.

⁶² Julian, *Misop.* 369A; Libanius, *Or.* 18. 195 (cf. 16. 21, where he says he will not mention the hoarding). On the tendency of the rich to hoard, see Garnsey (1988: 76–9).

⁶³ Julian, *Misop.* 369A–370A.

at economic interference ended in failure.⁶⁴ At least Diocletian was remembered at Antioch for building grain stores there.⁶⁵ It is noticeable that when Jovian was at Antioch in October 363, only a year after Julian's edict, he had to deal with a massive increase in the price of marble. This he did, not by direct price-limiting measures, but by encouraging quarrying, so that the price would lower itself naturally, when supply could match demand.⁶⁶

The attitudes of Diocletian and Julian towards high prices are therefore similar. They institute price regulation against the greedy, who have failed to reform themselves. Further, the hoarding and profiteering of the wealthy Antiochenes evidenced by Julian and Libanius is well reflected in Diocletian's attempt to prevent circumvention of the edict by banning the removal of goods either from the market or to more distant markets. It is noticeable that Julian did not establish a penalty for contravention of his regulations, for which forbearance Libanius says the Antiochenes should be grateful, although officials do appear to have engaged in active supervision by demanding to see audited accounts;⁶⁷ but even with a penalty laid down and put into use, Diocletian was no more successful at enforcement.

However, while the perspectives of Julian and Diocletian are thus similar, so may be the factors they ignore. Thus just as the presence of Julian's army is seen by Socrates as a contributory factor to the problem, so might it have been for Diocletian. It is true that Julian was amassing troops, perhaps all over northern Syria, for war against Persia, whereas extra troops brought from the Balkans for Galerius' operations in 297-8 should have returned there by 301. But the presence of many extra people, both with court and army,⁶⁸ and also on embassies and as private petitioners, often with plenty of disposable wealth, cannot but

⁶⁴ Ammianus 22. 14. 2 notes the similarities between the mismanagement by Julian in 362 and by Gallus in 354, who also attempted price control in Antioch (14. 7. 2). See the discussion by J. F. Matthews (1989: 406-9).

⁶⁵ Malalas 12. 307. At Alexandria also, the distribution of corn he instituted in 302 lasted until the time of Justinian (Procopius, *HA* 26. 41; *Chron. Pasch. s.a.* 302).

⁶⁶ *CTh* 10. 19. 2.

⁶⁷ Libanius, *Or.* 18. 195-6 and *Ep.* 1406.

⁶⁸ It is difficult to assess the extent of the permanent military presence at Antioch, for which evidence is very slender, although Antioch's importance ought to have made such a presence inevitable (see Isaac 1992: 270-4). Note, however, that within two years of the Prices Edict, the Antiochenes themselves raised a force (for an earlier Antiochene militia, see Isaac 1992: 271 n. 10) and defeated rebellious soldiers from Seleucia, though they were still punished by the emperor (*PLRE* i (Eugenius 1), 291 and Barnes, *NE* 12 date this to 303, but Portmann 1990: 235 prefers summer/autumn 302, thus making the affair contributory to a sense of instability leading to the Great Persecution).



have created localized economic dislocation wherever the emperor went.⁶⁹ This may apply even if the court settles for a few years.⁷⁰ One writer talks of the imperial presence at Trier as causing abundance but also high prices in Gaul.⁷¹ Malalas in a passage already mentioned, whether we take it as a garbled reference to the Prices Edict or not, shows difficulties between traders and soldiers in Antioch at the time of Diocletian.⁷² Furthermore, if the emperor is in effect carrying a mini-inflation with him wherever he goes, it is not surprising if soldiers and others thus keep up a stream of complaints about high prices, which finally drive him to drastic action.

Thus I consider that the genesis of the edict should be seen to a significant extent as a product of the emperor's residence in Antioch. Inflation may have been empire-wide and the edict may use the rhetoric of universality, but this should not detract from the important role played by local conditions and considerations in informing the emperor's motives and actions.

VI CHOICE OF ITEMS FOR THE TARIFF-LIST

The most important point to highlight with regard to the tariff-list is that it is a creation of officials. It cannot automatically be assumed to be an accurate economic document, though assessment of the extent of the gap between bureaucratic compilation and everyday reality is not easy. How did the emperor's officials set about compiling their list?

⁶⁹ Thus, S. Williams (1985: 128). Halfmann (1986: 81, 122-3) adduces the examples of both Diocletian and Julian to illustrate how aristocratic speculation and profiteering were used to offset the burden of liturgies and hospitality during an imperial sojourn. This contrasts with the untrammelled boon supposed to be represented by an imperial *adventus*, which gave promise of military security and grants of privilege or favour (MacCormack 1981: 17-39 on the *adventus* under the tetrarchy and Constantine). Note Dio Chrysostom, *Or.* 35. 15-17 on the beneficial economic effects of the governor's visits for the assizes; cf. Basil, *Ep.* 74-6 for the detrimental effects of the subdivision of Cappadocia upon Caesarea, formerly capital of the undivided province.

⁷⁰ On Antioch as imperial residence, campaign headquarters, and provincial capital, see Liebeschuetz (1972: 59-60) and Isaac (1992: 274-4, 436-9). Despite frequent and lengthy imperial sojourns, 'Antioch had never fully adjusted to its role as part-time imperial capital' (J. F. Matthews 1989: 413).

⁷¹ *Expositio* 58; cf. *ibid.* 32 (on Antioch), quoted below. On the imperial presence in Gaul, see Van Dam (1985: 9-16, 20-4).

⁷² Malalas 12. 307; cf. Liebeschuetz (1972: 58-9).

7 (*Opposite*) Diocletian's Prices Edict (AD 301). Part of the tariff list (chs. 15-18) from Aphrodisias (Roueché 1989: 278-82)

One suggestion of Mommsen was that it was based on a glossary, such as that of pseudo-Dositheus, but the parallels are too irregular to provide more than superficial coincidence where they do occur.⁷³ A more convincing model derives from the *leges portus* of two towns in Africa, Zarai⁷⁴ and Lambaesis.⁷⁵ Comparison of these, especially that of Zarai, with the Prices Edict shows some similarities in the type and order of items listed.⁷⁶ Animals are given in order of descending value as follows: equines, bovines, porcines, ovines, and caprines. The later edict is of course much fuller and correspondence between the texts should not be pressed too far. Nevertheless, it is possible that there was some continuity in methods of listing from the second and early third centuries to the early fourth and that this provided a starting point for Diocletian's officials in their ambitious project,⁷⁷ or even that this was already reflected in the organization of the imperial archives.

Note also that fourth-century declarations of prices by the guilds at Oxyrhynchus do not seem to follow any pattern similar to the edict, either in the general order of guilds and their categories of commodities or in the arrangements of individual items within declarations.⁷⁸

The imperial records must have contained information covering almost every category of goods and services. We know almost nothing about imperial accounting systems and record-keeping, and should be wary of attributing to them modern ideas of order and comprehensiveness. But there must have been extensive taxation records, and perhaps accounting returns from the imperial estates, records of gifts received and given, stock records from imperial storehouses, lists of the goods consumed directly in the imperial court by emperor and slaves alike. Perhaps more information was available as a result of taxation reform and diocesan organization. It is quite possible that the compilers of the edict took information about goods and prices from existing imperial documents, even if these were themselves eclectic, inconsistent, or out of date.⁷⁹

It is to be doubted whether there was any serious attempt to gather information from far afield;⁸⁰ but any additional information collected by investigation is most likely to have derived from the immediate

⁷³ Blümner and Mommsen (1893: 56). ⁷⁴ *CIL* 8. 4508 (AD 202).

⁷⁵ *AE* 1914. 234 (c.120–60).

⁷⁶ Comparisons are set out in Giaccherio (1976: 217–20). ⁷⁷ *Ibid.* 221.

⁷⁸ See, e.g., *P. Oxy.* liv, p. 230; li, p. 68 n. 17.

⁷⁹ On imperial wealth, see in general Millar (1977: 133–201).

⁸⁰ Similarly, much of the Gregorian Code was probably compiled from the imperial records or other material close at hand, although a visit to Rome also seems likely.

locality. The genesis of the edict took place in Antioch, as already shown, and was not the product of officials in Nicomedia as is sometimes assumed.⁸¹ Thus, the edict should, to some extent, reflect Antiochene conditions. It is possible that some consultation with the guilds or other groups took place. Libanius describes Julian in Antioch calling together farmers, artisans, and shopkeepers to enforce price control.⁸² Diocletian at Antioch, in a passage of Malalas already noted, regulated measures used by traders, to prevent oppression by soldiers.⁸³ Although abuse by soldiers seems entirely plausible, the text of Malalas is sometimes inverted so that what is described is the exploitation of soldiers by traders, thus echoing the defrauded soldier in the edict preamble.⁸⁴ Whichever is correct, this is a memory of imperial interaction with the traders.

It is difficult to demonstrate positively the Antiochene perspective of the edict. Chapter 26, *de linis*, is the longest in the edict and contains myriad references to cloth from five cities, all in an arc around Syria (and Antioch); going north-south they are Tarsus, Laodicea, Byblus, Scythopolis, and Alexandria. One fourth-century source describes Laodicea's important relationship to Antioch as follows:

Est ergo et bona civitas et Laodicia, quae suscipiens omne negotium et emittens Antiochiae magnifice adiuvit et exercitui.

There is also the fine city of Laodicea, which, by undertaking every type of business and exporting, is a wonderful support for Antioch and the army.⁸⁵

Later, however, the same source describes the cloth cities in terms of universal export:

In linteamina sunt hae; Scythopolis, Laodicia, Byblus, Tyrus, Berytus quae linteamen omni orbi terrarum emittunt.

These are linen-producing; Scythopolis, Laodicea, Byblus, Tyre, Beirut, which export linen to the entire world.⁸⁶

The composition of the edict in Syria and its promulgation in Alexandria may be reflected in the sea-freight charges, where the first departure point considered is Alexandria and the next one Oriens. As already noted above, however, this could simply reflect the commercial

⁸¹ As by Duncan-Jones (1982: 8 n. 2, 367) and Hopkins (1982: 81; 1983: 103).

⁸² Libanius, *Or.* 18. 195. On Antiochene guilds, see Liebeschuetz (1972: 219-24).

⁸³ Malalas 12. 307. ⁸⁴ Giaccherio (1974: i. 1 n. 3).

⁸⁵ *Expositio* 27; cf. 28 on Seleucia. The whole chapter on Syria has recently been trans. by Meijer and van Nijf (1992: 83-5). ⁸⁶ *Expositio* 31.

importance of these places. It is interesting to note that there is no rate for sea-carriage between Egypt and Syria.

Since Antioch was a great metropolis and imperial capital, there must have been few goods from around the empire that did not find their way to it. The *Expositio* says:

Est ergo Antiochia prima, civitas regalis et bona in omnibus, ubi et dominus orbis terrarum sedet; civitas splendida et operibus publicis eminens et multitudinem populorum undique accipiens, omnem sustinet; abundans omnibus bonis. There is first Antioch, royal city and fine in all things, where the lord of the world has his seat; a splendid city with outstanding public buildings, it receives great numbers of people from everywhere and sustains them all; it overflows with all goods.⁸⁷

And later:

Habes ergo Antiochiam quidem in omnibus delectabilibus abundantem, maxime autem circensibus. Omnia autem quare? Quoniam ibi imperator sedet, necesse est omnia propter eum.

Therefore, you have Antioch, replete with all pleasures, and especially circuses. And why all this? Because the emperor resides there, and it is all needed on his account.⁸⁸

The sources for Julian at Antioch refer to the extensive luxury market. Julian imagines the citizens complaining of being deprived of their accustomed sybaritic way of life and being treated as though they were Thracians or Celts.⁸⁹ It is certainly difficult to argue that any item in the edict could not have been imported into Antioch.

There is a wealth of geographical designations for goods. Although by this time some items such as dalmatics have ceased to carry any indication of origin in their names, many other terms seem to be literal. It is noticeable that mention is made both of the Nervian byrrus and a Laodicean imitation of it,⁹⁰ and there is also Tarsian cloth and Tarsico-Alexandrian, a cognate weave from Alexandria, sharing a special yarn and use of the warp-weighted loom.⁹¹ This implies that the original must still derive from its geographical description. These geographical indicators cover the whole empire. For instance, *birri* are listed from Laodicea, Belgica (the Nervii), Noricum, Dacia Ripensis,

⁸⁷ *Expositio* 23. ⁸⁸ *Ibid.* 32.

⁸⁹ Julian, *Misop.* 349D, 350C-D. Cf. the criticisms of the luxuries of the rich by Libanius, *Or.* 16. 23.

⁹⁰ *PE* 19. 38, 44. Frézouls (1978: 294) takes this as a Nervian-style garment in Laodicean wool. This Laodicea is in Phrygia not Syria. ⁹¹ *PE* 26. 14, 17. See Wild (1969).

Britain, Canusium (in Apulia), Numidia, the Argolid, Achaëa, Phrygia, and Africa.⁹²

Well-known and quality goods were in demand far afield. The edict lists top-grade Italian wines⁹³ and Lucanian sausages,⁹⁴ which are also noted by the *Expositio*,⁹⁵ so that the edict has the feel of a gazeteer.

Some items give pause for thought. Given the Antiochene (and Mediterranean) feeling of despise for Gauls and Thracians and their lifestyle, it is odd to find Celtic beer, *cervesia*, listed in the edict.⁹⁶ This may be a transference of the term to some eastern equivalent,⁹⁷ rather than implying importation into Antioch. The same arguments apply to *camum*, listed with *cervesia*, which may be of Pannonian origin.⁹⁸ The presence of non-eastern beers, however, may be a reflection of the Balkan origin of the emperor and much of his staff and soldiery.⁹⁹

Both patrician and senatorial shoes are listed.¹⁰⁰ Senators are largely confined to Italy at this time in terms of their careers, and there are none attested as originating in Syria.¹⁰¹ However, senatorial governors of Syria are known into the 290s,¹⁰² and if there were no resident Syrian senators, there may well have been senators present at court on public embassies or for private petitions.¹⁰³ Even the emperor may well have needed senatorial shoes for occasions when he processed as consul. Thus the presence neither of Celtic beer nor of senatorial shoes can be used as proof that western conditions or even non-Antiochene conditions were taken into account in the compilation of the edict.

One chapter, however, does look beyond the confines of Antioch.

⁹² *PE* 19. 37–54.

⁹³ *PE* 2. 1a–7. This would have pleased Pliny, who notes the primacy of Italian wines (*NH* 14. 8, 87). But note that grapes are not confined to cultivation in their place of origin; e.g. Gallic grape in Italy and Thasian grape in Egypt (*NH* 14. 39, 117).

⁹⁴ *PE* 4. 15–6.

⁹⁵ 55 and 53.

⁹⁶ *PE* 2. 11. See Pliny, *NH* 22. 164. For Julian's criticism of beer, see *Anthologia Palatina* 9. 368 = Julian, *Epigram* 1 (ed. Wright in Loeb, iii. 305).

⁹⁷ Diodorus Siculus 5. 26. 2 notes the Gauls' lack of wine and their making of beer, for which he uses by transference the Egyptian beer term *zythus*. This term occurs in its own right at *PE* 2. 12.

⁹⁸ André (1981: 178).

⁹⁹ The emperor Valens' Pannonian origins were mocked by the Chalcedonians who called him *Sabaiarius*, after an Illyrican beer (Ammianus 26. 8. 2).

¹⁰⁰ *PE* 9. 7–8.

¹⁰¹ The only Syrian possibility might be descendants of Zenobia (although she had been exiled to Italy), discussed by Jacques (1986: 212–13).

¹⁰² Barnes, *NE* 153–4.

¹⁰³ For persons of senatorial rank resident at the court of Maximinus in Nicomedia in 311, see Lact. *DMP* 44. 1–2.

This is the chapter on sea-freight charges.¹⁰⁴ There are a number of aspects to this section that reveal the manner of compilation.

The underlying pattern of the chapter appears logical. Choose the most important ports. Then set maxima for journeys between the first to the rest, from the second to all except the first, from the third to all except the first and second, and so on, with the final port needing no separate entry as already being covered under each of its predecessors. Add in odd extra routes along the way. Something like this method is employed, but not with consistency. Thus the main embarkation points listed are Alexandria, Oriens, Asia, Africa, Rome, and Nicomedia. For each (except Rome), the first destination listed is Rome. After this, order ceases. Thus no journey is given from Alexandria to Spain, but three journeys from Oriens to Spain, Baetica, and Lusitania, and one journey each from Africa and Rome to Spain. Asia is given as a point of departure, but Ephesus appears to be the equivalent destination, while Dalmatia and Salona are also synonymous. Even the use of *in*, *ad*, or neither is inconsistent.

The pricing, given in *denarii per castrensis modius*, is interesting. There is one major anomaly, whereby the rate from Africa to Sicily is six *denarii*, and from Sicily to Gaul eight, but from Africa to Gaul only four. Apart from this, the other prices appear based on distance, with a gradual lessening of the equivalent rate per mile as the distance increases,¹⁰⁵ which may be the result of inadequate classical cartography. For the list looks much like the creation of officials poring over a map. It is noticeable that no return journeys are listed. Yet the rubric begins *ex quibus locis ad quas provincias*, and every entry is of the type 'from A to B'. We can only suppose that return journeys are taken as covered by implication. This increases the likelihood of map-based thinking, since journey times can differ widely between outward and homeward journeys. Thus the average time from Rome to Alexandria is about two weeks, but from Alexandria to Rome about two months.¹⁰⁶

The overall level of sea-transport prices is disproportionately low in relation to land transport and other prices in the edict.¹⁰⁷

The chapter lists in all almost fifty routes. At Aphrodisias, however,

¹⁰⁴ For the text, see *PEAez* ch. 35 and *PEAph* chs. 35–35A.

¹⁰⁵ For a table of equivalent costs per mile for the different routes, see Hopkins (1982: 85–6).

¹⁰⁶ Casson (1951: 145–6). Note also the differences between Alexandria–Byzantium and Byzantium–Alexandria. All the points mentioned above occur in Hopkins (1982: 1983: 102–4). The rates for river transport distinguish between journeys up-river and down-river (*PEAph* 35A. i. 31–2).

¹⁰⁷ Duncan-Jones (1982: 368, 386).

although the list ended at this point with an acclamation, further versions of the chapter were added afterwards.¹⁰⁸ These do not appear to be lists for fiscal cargoes, which are repeatedly stated in this additional section to have their own schedule, though some of the unallocated freight-charge fragments may be from such a section as yet unidentified.¹⁰⁹ Thus the edict was in force long enough for some sort of revision (plus a fiscal schedule?) to be needed, although it is only at Aphrodisias that such additions are known.

What is noticeable about both versions is the existence of western place-names. And this is not only for journeys to and from the east, but for journeys within the west: Africa to Rome, Sicily, Spain, and Gaul;¹¹⁰ Rome to Sicily, Spain, and Gaul;¹¹¹ Sicily to Gaul and Genoa;¹¹² Sardinia to Rome and Genoa;¹¹³ Ravenna to Aquileia.¹¹⁴ This section at least, therefore, envisages enforcement in the west.

It must be noted that the tariff covers goods at all stages of production, thus not limiting control and penalties to those involved in only one stage of production or marketing. Therefore, in addition to wage and transport costs, it includes both raw, semi-worked, and finished goods, for instance hemp, spun hemp, and rope.¹¹⁵

VII PRICES

The choice of items for inclusion is only one aspect of the compilation of the tariff. What of the prices?

There are two points to consider here: the overall level of prices, and the relative prices between goods, both of which bear upon the extent to which the edict reflects economic realities.

It appears that the maxima set may already represent underestimates for realistic prices. The use of guild declarations of prices at Oxyrhynchus shows an annual inflation rate for 310–59 of about 14 per cent. Including edict prices, the annual inflation rate for 301–59 rises to about 19

¹⁰⁸ Roueché (1989: 305–11).

¹⁰⁹ *Expositio* 28 draws attention to the fact that Seleucia receives both fiscal and private cargoes.

¹¹¹ *PEAez* 35. 32, 35–6.

¹¹² *PEAez* 35. 37 and *PEAph* 35A. i. 2. 3.

¹¹³ *PEAph* 35A. i. 4, 7. Lines 6 and 8 are also from Sardinia to unknown destinations, but one may be Sicily. Lines 9 and 10 may represent journeys from other nearby ports to Rome, in view of the low rate of 2 *denarii* for one of them (Roueché 1989: 307–8).

¹¹⁴ *PEAph* 35A. i. 33. This is the only journey supposing coastal cabotage as opposed to major inter-provincial trade. It is also the only rate calculated per 1000 *modii* instead of per *modius*. See Biscardi (1987: 175, 180).

¹¹⁵ *PEAez* 33. 17a, 18, 20, with comments of Crawford and Reynolds (1979: 202).

per cent. It is thus considered that the edict prices are too low.¹¹⁶ In mitigation, however, it is interesting that the price of wheat in terms of gold bears comparison with figures in Ammianus. He implies that at Carthage (a city comparable to Antioch) in the 370s corn was being sold at 10 *modii* per solidus in time of shortage and 30 *modii* per solidus in time of plenty.¹¹⁷ Since the solidus was struck at 72 to the pound and gold in the edict is set at a maximum of 72,000 *denarii*, the solidus is equivalent to 1,000 edict *denarii*. With corn at 100 *denarii* per *modius* in the edict, this gives 10 *modii* per solidus. Thus the edict sets a maximum equivalent to the Carthage shortage price, while allowing for the price to be lower at times of plenty. Of course, this is worked out in terms of gold equivalents.¹¹⁸ The amount of *denarii* for gold in the edict may already be an underestimate.¹¹⁹

The prices set vary from 1 to 150,000 *denarii*, although in many sections the maxima follow a standard pattern.¹²⁰ It is clear from the variety and price of goods (both raw material and finished products) that all qualities of people are envisaged as affected by the edict's provisions, not just the defrauded soldier of the preamble.¹²¹ At one end of the scale we have the restricted market for patrician, senatorial, and equestrian shoes,¹²² and the extremes of expense for a class one lion at 150,000 *denarii* (the most expensive single item), a high-prestige animal for the arena,¹²³ and for one pound of double-dyed purple silk also at 150,000.¹²⁴

¹¹⁶ *P. Oxy.* liv, p. 233. Conditions at Oxyrhynchus and Antioch are not necessarily comparable, though one might expect prices in the big city to be even greater and thus the edict prices even lower in comparison to Antiochene ones.

¹¹⁷ Ammianus 28. 1. 18.

¹¹⁸ Taking the edict into account, the Oxyrhynchus declarations show an annual inflation rate for corn of over 20% (*P. Oxy.* liv, pp. 234, 239 n. 8). But note that some prices even seem to drop in terms of gold later in the 4th cent. (ibid. 239 n. 3).

¹¹⁹ Bagnall (1989: 69–70) explains the apparent costliness of wheat *vis-à-vis* gold by suggesting that precious metal values are deliberately underestimated (to help lessen the cost of compulsory imperial bullion purchases), while the corn prices are close to reality.

¹²⁰ 69 of 96 vegetables in sect. 6 are priced at so many per 4 *denarii* (Fraysn 1993: 63–4).

¹²¹ However, Fraysn (1993: 132) supposes that the original plan to prevent excessive profiteering and provide stability for military staples was comprehensively extended as a result of bureaucratic instinct.

¹²² *PE* 32. 1a.

¹²³ *PE* 24. 1a. The presence of purple in the edict (and wage rates for spinners of purple, *PE* 24. 13–16) suggests a valid trade in it at this time, although in general under the late empire the purple industry was closely controlled, and mere possession of purple textiles could be proof of treasonable designs in the mind of a suspicious emperor (*CJ* 4. 40. 1, *CTH* 10. 20. 18, 10. 21. 3, Ammianus 16. 8. 8).

¹²⁴ *PE* 9. 7–9.

At the opposite end are many cheap commodities, such as the Egyptian peasant beer *zythus* which, at only two *denarii* for a *sextarius*, is the cheapest drink in the wine list, the most expensive Italian imports being set at 30 *denarii*.¹²⁴ Many goods are cited with examples varying greatly in price, or are explicitly stated as first, second, or third class. Cloth includes types at all prices and grades, including that *ad usus rusticorum vel familiaricorum*.¹²⁶

I have already mentioned the Oxyrhynchus price declarations. There are a substantial number of these, spanning a period from c.310 up to the fifth century.¹²⁷ They do not seem to be concerned with the amount charged by guilds to customers, but rather with the input costs of raw materials for the guilds. The exact use made of this information is uncertain, but it is likely to have served some purpose such as assessing taxation levels, *adaeratio*, or rates of payment for goods by government. In a text already cited, Constantine instructs the urban prefect that, in order to set a fair rate of commutation into cash for the pig levy, the governors should find out the current price of pigs in their area, since he is aware that prices fluctuate from time to time and place to place.¹²⁸ The earliest known price declaration is from April 300, a year before the edict.¹²⁹ Thus it is likely that the imperial officials had some guild prices, from Antioch at least, to use as a starting-point for their tariffing, and if they ultimately chose lower levels, these could still be used as a basis for relative values.

We have already seen that freight charges are calculated in sensible proportions to one another (while being rather low compared to other prices). Similar observations can be made for other goods. The ratio of beef to pork in the edict (2 : 3) is the same as that in a papyrus of 290.¹³⁰ Jewish evidence sometimes provides similar ratios as the edict, for instance in relation to wheat and barley, and wine and honey.¹³¹ Slave prices show proportions between male, female, and child comparable

¹²⁵ Note, however, that the most expensive types of fish appear to be excluded (Frayn 1993: 69).

¹²⁷ For examples from the tetrarchy and Constantine, see *P. Oxy.* 3731-40, 3742-5, 3747-53, 3755, 3760-3, 3766, 3768. 5th-cent. prices with interesting local fluctuations are given at *P. Oxy.* 3628-36.

¹²⁸ *CTh* 14. 4. 2. Jovian also warns that price levels in Campania not Rome should be followed (*CTh* 14. 4. 3).

¹²⁹ *P. Ant.* I. 38, re-edited and redated by Manfredi (1966: 244-5) and now published as *SB* 10257. Fikhman (1991/2: 140) sees this as part of the information collection undertaken in preparation for the edict, but I feel that this is an overestimation of administrative efficiency and foresight (despite the claims to foresight in the preamble).

¹³⁰ *PE* 4. 1-2 and *P. Oxy* 2422; cf. Sperber (1991: 151-2). ¹³¹ *Ibid.* 112-21.

to information from Delphi,¹³² but do not reflect the lower life expectancy for the older slaves.¹³³ The timber prices for fir and pine are proportional, when calculated in terms of volume. The exception is in the case of the largest trees, whose scarcity makes them disproportionately more expensive.¹³⁴ This shows that some intelligent calculation has gone into the maximum prices for this section, a calculation that took cognizance of variations in volume.

Some rationale is also discernible behind the marble section (*PE* 31), both in its pricing relative to other goods and in the type of trading which it envisages. Recent discussion has suggested that if priced in square feet, the edict maxima are both appropriately lavish for such a luxury item, while plausibly envisaging the most common local transaction as being for veneer.¹³⁵ Prices within the chapter are also not without logic. While it is difficult to establish the full basis for tariffing, prices may vary according to a combination of all or some of rarity, difficulty of extraction, and difficulty of transport. Thus, the common marbles from islands with the easiest transport have the cheapest maxima.¹³⁶

One writer attempts calculations to relate the wage and commodity prices. Thus a daily wage of 25 *denarii* provides frugal, but acceptable subsistence for a single person, though not a family.¹³⁷ In general, both the wages of workers paid by the day and those paid by quantity of raw material worked seem low.¹³⁸ But whether this reflects the economic situation or is the choice of the compilers cannot be decided.

Something should be said about the relation of prices to the Currency Decree(s). I have already mentioned that there may be some relationship between the values in force from 1 September 301 and the choice

¹³² Crawford and Reynolds (1979: 198) citing Hopkins (1978 ch. 3 (p. 159)).

¹³³ Duncan Jones (1982: 385), although he suggests that difficulties of estimating slave ages may have led to the differentials being reduced. The value of a male slave in prime of life in terms of wheat appears comparable to that under the principate.

¹³⁴ See Meiggs (1982: 366–8). There are certain errors in Meiggs's calculations. These do not alter the general tenor of his results, but do exaggerate some of the differentials. The omission of shorter lengths in the edict can be explained since young trees are too small in girth to be felled, and shorter lengths can always be obtained by sawing sections from the larger timbers. On both these points, see DeLaine (1997: 214–15).

¹³⁵ Corcoran and DeLaine (1994).

¹³⁶ 40 *denarii* for marble from Scyros, Proconnesus, and Lesbos. These and related problems are discussed in an as yet unpublished paper by Dr Hazel Dodge of the Institute of Archaeology in Oxford.

¹³⁷ Frézouls (1977: 264).

¹³⁸ Frézouls (1977: 266; 1978: 291), who also notes an exception in that textile workers earn about twice as much per quantity worked as metalworkers. But note an opposite conclusion about wage rates by Ermatinger (1990: 48).

of prices for the edict. It is most probable that, after the revaluation, coins existed with tariffs of 100, 25, and 4 *denarii* respectively. It is not certain which of these represents a doubling. Thus it cannot be said for certain that the smallest Diocletianic coin, the small laureate copper (and this is the coin to which no allusion is made in the decree), was 1 *denarius* doubled to 2. The prices for the edict, however, do tend to avoid sums requiring the use of a one-*denarius* coin.¹³⁹ However, this might not matter in any case, since many items are given in unit measures¹⁴⁰ and problems of payment for one-*denarius* goods would cease when multiplied by realistic quantities. Similarly, in Britain today, petrol is frequently priced in meaningless fractions of a penny per gallon or litre, creating price differentials that only have effect over a large quantity sold. Further, some of the edict values are recorded differently in different copies. Thus a goad or whip is given at 5 *denarii* in a Greek copy but 6 *denarii* in Latin.¹⁴¹ Indeed, arbitrariness, mistakes, and confusions are all too likely in the compilation of the original list and its dissemination. Thus, while the edict does seem broadly consistent with the revaluation coinage, the prices cannot be used as proof of the new values.¹⁴² There is no need to suppose that there must be a logical explanation based on economic realities for all oddities in pricing and description in the edict.

VIII PROMULGATION

Whatever eastern bias there may have been in the imperial records or as a result of the court's presence in Antioch, this only limits the information put into the tariff-list, not the intended area of enforcement. This was clearly universal according to the conception of the emperor's rhetoric. But how widely it was promulgated is another matter.

The fragments of the edict come from almost forty locations.¹⁴³ Thus,

¹³⁹ See the tables in Ruschenbusch (1977: 195–6). He deduced that the prices presume coins of 25, 4, and 2*d.*, the first two now confirmed by the inscriptional evidence. But note that Crawford (1975: 582) attempted to use similar price inferences to support coins of 5 and 2, the former value being now discredited. Thus, deductions are hazardous.

¹⁴⁰ e.g. *PE* 24. 13, *PEAez* 35. 51, *PEAph* 35A. i. 31. But note *PE* 17. 8, 6*lbs.* for 1*d.*

¹⁴¹ *PE* 15. 17 (5*d.*) = *PEAph* 15. 15 (6*d.*).

¹⁴² See the cautious comments of Bagnall (1985: 21–2) on deductions from the edict prices.

¹⁴³ For maps showing the distribution of finds, see Giaccherio (1974: ii, tables 1 and 2). Add now the fragments from Odessos (Mihailov 1980), Corinth (Sironen 1992), and Crete (Chaniotis and Preuss 1990).

more copies of this text were inscribed in durable form and have survived than for any other ancient epigraphic text. This abundance is deceptive. The find-spots are not evenly spread over the empire, or even the eastern empire. Indeed, it has been suggested that the inscriptions can be assigned to only four provinces.¹⁴⁴ The first is Egypt, which furnishes one fragment, containing the full titulature that is the basis for dating the edict. Since the emperor was in Egypt shortly before or after the edict was issued, permanent record of its promulgation there is no surprise. It is thus all the more unusual that there are no known fragments from Syria, the place of the edict's genesis. The other three provinces, which provide multiple find-spots, are Phrygia-Caria, Crete-Cyrene, and Achaea. It is certain that Phrygia-Caria was not yet divided,¹⁴⁵ but the date of the division of Crete from Cyrene is uncertain.¹⁴⁶

There remain three difficult fragments. The one from Samos may have traversed the short distance from the Carian mainland. The Odessos fragment may also have travelled from Asia Minor, since a great deal of ancient stone was transported in this direction in the nineteenth century.¹⁴⁷ The fragment from Pettorano in Italy has excited more controversy. As the only piece from the west, it is almost the only evidence that the edict was promulgated there. But it is in Greek, and the only other Greek fragments come from Achaea. It seems unlikely that a law known in Latin from Greek-speaking areas should have been inscribed in Greek in central Italy. Some attempt has been made to prove that the marble upon which the edict fragment is carved is Carrara and that the copy is truly Italian,¹⁴⁸ but the sliver used for testing was really too small to provide positive results and the whole fragment is not large,¹⁴⁹ so that it could easily have been transported from Greece.

Even if the minimalist view is not maintained, the edict was not as widely inscribed as the number of copies implies. However, it must have been enforced in more places than possessed durable copies, such as in Antioch, where it was designed. Lactantius, as Professor of Rhetoric at Nicomedia (and therefore not travelling with the court), should also reflect in his account personal experience in that city.

¹⁴⁴ This is the argument of Crawford and Reynolds (1975: 162-3).

¹⁴⁵ Roueché (1989: 20-1).

¹⁴⁶ Ptolemais, the only find-spot in Cyrene, became capital of the new province of Libya Superior (Pentapolis).

¹⁴⁷ The fragment is very small: 0.24m × 0.14m × 0.025m.

¹⁴⁸ Guarducci (1985) (in answer to Crawford 1984).

¹⁴⁹ 0.47m × 0.21m × 0.06m (Giaccherio 1974. i. 82).

While the edict should have been promulgated throughout the east, what of the west (if we discount the Pettorano fragment)? We have already seen that the rhetoric of the preamble is universal and that the sea-freight charges presume that the edict should apply in the west. In addition, *PSI* 965 refers to the law on goods for sale, and then mentions the Currency Decree as applying to Rome and the provinces, which seems to echo the decree itself. Although reconstruction of the new and as yet unpublished fragments of the Currency Decree is still difficult, there are references to both the provinces and Rome. These two texts however, only confirm the edict's theoretical universality. The *Consularia Constantinopolitana* s.a. 302 state *His cons. vilitatem iusserunt imperatores esse*.¹⁵⁰ The entries in the *Consularia* appear to be written from a Rome-centric or at least western point of view until about 350, so that this entry would seem to show knowledge of the Prices Edict at Rome.¹⁵¹ Indeed, it makes excellent sense that the edict issued at the end of 301 should only have reached Rome in 302. No weight can be attached to the dating, however, as the dates in this text are frequently inaccurate; thus the Caesars are appointed in 291 (instead of 293) and the abdication takes place in 304 (instead of 305).¹⁵²

The most likely parallel for the edict's enforcement is the Great Persecution. After taking action themselves, Diocletian and Galerius sent letters to Maximian and Constantius asking them to enforce the decrees in their territories. Maximian made some effort at compliance, though only Africa suffered to any extent, while Constantius produced only token measures.¹⁵³ I think it unlikely that the edict was effectively promulgated in the west. New epigraphic discoveries may, of course, render this view untenable.

The edict was composed in Latin (though much of its vocabulary is based on Greek) and it was inscribed in permanent form in Latin as well. It is thus part of a tetrarchic pattern of long imperial pronouncements posted in multiple durable copies throughout the east. All copies of the preamble that are known are in Latin. But in Achaea (plus the Pettorano text) all fragments of the tariff are in Greek, in at least two different translations. This may represent an attempt by the governor to

¹⁵⁰ *Chron. Min.* 1. 230 = Burgess (1993: 235).

¹⁵¹ On the origins of the material in the *Consularia* for this period, see Burgess (1993: 191–6). Note that he argues (p. 193 n. 18) for an opposite interpretation of the reference to the edict, supposing that this indicates an 'official/imperial' source at this point, precisely because the edict was otherwise not issued in the west.

¹⁵² *Chron. Min.* 1. 230 1 = Burgess (1993: 234–5).

¹⁵³ Lact. *DMP* 15. 6–7.

make the list more intelligible to and thus more enforceable upon the Hellenophone population, although it does not further understanding of the reasoning in the preamble, which is kept in Latin. It has been noted that the edict of Constantius and Galerius on fiscal debtors, found in Lycia in Latin, is in Greek at Athens (edict catalogue, no. 18). This may therefore be a common tendency of the governors of Achaëa, or even of the same governor. At Aezani, Fulvius Asticus, governor of Phrygia-Caria, promulgated the edict with an explanatory edict of his own in Greek. Although it does not give an entirely accurate account of the imperial apologia from the Latin preamble, it seems far more likely that the imperial purpose was mediated to the population via this short Greek text than the long and complex Latin preamble. Thus a gap opens up between the edict's careful construction and its enforcement. And further, although even the Latinless or illiterate might have found the sheer bulk of the inscription an impressive show of authority, any such effect may have worn thin, if the text remained on display after its provisions had proved unworkable.¹⁵⁴

IX LENGTH OF ENFORCEMENT

How long did the edict remain in force? The revisions of the Aphrodisias sea-freight section imply that enough time passed to allow for initial inscribing and later additions. Lactantius seems to envisage a relatively speedy failure and repeal, after a few executions. Because he is giving general background in this section to the rule of Diocletian and the other tetrarchs, before embarking on the account of the persecution, it is not possible to relate the measure to the chronology of the persecutions. However, the implication of the passage is that Diocletian made the law and soon had to unmake it. It should have ceased to operate at the latest by the abdication in 305.

Some attempts have been made to find the price maxima reflected in papyri for up to a decade after the edict. These rely on coincidence between maxima in the edict and prices for similar goods in real transactions.¹⁵⁵ But none of the texts cited state that they are complying with the edict's provisions (as happens with tax declarations) and without

¹⁵⁴ On the symbolism of inscriptions, see Ch. 9 Sect. ii. Note also the comments of Rogers (1991: 19–24) on the bequest of C. Vibius Salutaris to Ephesus (AD 104).

¹⁵⁵ See, e.g. Bingen (1966: 372–3). A list of poss. reflections in the papyri is given by Lauffer (1971: 58–60). The most recent advocates of the effectiveness of the edict are Ermatinger (1990) and Fikhman (1991/2).

such explicit evidence it is hard to take these as more than coincidence. We must also remember that the edict gives maxima, so that any documented prices lower than those in the edict could just as well be reflecting compliance. It may be, however, that although the edict was effectively dead, some state transactions continued to try and peg prices for supplies to edict levels. This seems to have happened with military clothing.¹⁵⁶

The fate of the physical copies of the edict was various. Some fragments are found being reused, perhaps not long after being set up. Thus at Ptolemais, a slab of the edict was used to pave a portico floor c.370, and the whole text may have undergone destruction and dispersal both before and after this.¹⁵⁷ But other copies of the edict remained on public display long after they had ceased to have any force, being in prominent positions from which they were not, or could not easily be, removed. The copy at Stratonicea adorned the *bouleuterion*,¹⁵⁸ while that at Aphrodisias was found *in situ* in front of the basilica next to the agora.¹⁵⁹

The edict, therefore, reveals many of the features of the period. The emperor may well be responding to local conditions, and even to the petitions of soldiers. He is also at pains to deny unwarranted intervention or innovation. Yet the edict is ambitious as never before, both in the task of attempting the 'codification' of goods and services, and in its rhetoric of promulgation and application. The government, however, overreached itself and lacked the machinery for effective enforcement. As a result, the measure was rescinded (or simply ignored) and, if there was no need for the rhetoric of apologia as happened at the later ending of the persecutions of the Christians, the epigraphic record was left as a testimony of its failure.

¹⁵⁶ Bagnall (1985: 69), giving three identical sets of prices in 302, 314, and 323.

¹⁵⁷ See Caputo and Goodchild (1955: 107). ¹⁵⁸ Giachero (1974: i. 66).

¹⁵⁹ Roueché (1989: 252, 328-9). A few scattered items were found elsewhere, but only seem to have been reused much later, e.g. in a screen in the converted Temple/Cathedral, perhaps as late as the Middle Byzantine period (Erim and Reynolds 1970: 122; Cormack 1990: 83 (fig. 5b), 84-7).

The Role of the Governor

I THE PROVINCIAL GOVERNOR BETWEEN SUBJECT AND EMPEROR

The role of the governor as portrayed in the private rescripts is of the utmost importance. This is not surprising. The emperor in his rescript is not hearing the case, either as judge of first instance or judge of appeal. Most rescripts apply to particular cases that are either under way or about to be initiated away from the imperial court. Thus most of the onus of a case falls on the judge, who is normally the provincial governor. Indeed, with the separation of military and civil offices and the subdivision of provinces, which reached its climax under Diocletian, the governor should have been able to devote more time than ever to his judicial functions and the term *iudex* is often interchangeable with that of *praeses*.

Appendix G gives a complete list of the occurrence of the word *praeses*, its equivalents, and of other terms for office-holders in the private rescripts. The title *praeses* or *praeses provinciae* (plus the adjective *praesidialis*) is the standard term employed. Next in frequency comes the term *rector provinciae*. The term *iudex* appears in three forms. Alone, it often denotes the governor. The term *iudex competens* is sometimes thought to be a Justinianic emendation of some term anachronistic by the sixth century.¹ However, since it occurs in both the *Consultatio* and the Vatican Fragments, which appear to have more faithful versions of original constitutions, it should be a term proper to our period. It covers all possible judges. *Iudices dati* or *pedanei* are inferior judges appointed by the governor in his stead, and are rare in our material.² There are a handful of periphrases and a single occurrence of the term *moderator provinciae*. Finally, there are other office-

¹ Berger (1953: 518). It could in some cases be a replacement for *praetor*. See Ch. 5 Sect. iiiB.

² One title in *CJ* (3. 3) deals specifically with *pedanei iudices*, and includes one edict and two letters of Diocletian on the subject (*CJ* 3. 3. 2-4; edict catalogue, no. 1b; letter catalogue, nos. 35, 40).

holders: *corrector*, proconsul, urban prefect, praetor, praetorian prefect, *rationalis*, and procurator.

In all, these references to the appropriate judge number about two hundred and seventy. Out of an approximate total of thirteen hundred private rescripts, this gives a proportion of 20 per cent. It is likely that the true proportion should be higher (though perhaps not by much), since some of the references to the governor may have been lost in the shortening or emendation of the rescripts, particularly in the *Codex Iustinianus*. There are examples of just such changes. *FV* 280 reads: *praeses provinciae, quod immoderate gestum est, revocabit*. In the Justinian Code (3. 29. 7), this has been altered to: *quod immoderate gestum est revocabitur*, thus losing all mention of the governor as a result of emendation. By contrast, shortening has caused *CJ* 3. 38. 3 to lack the initial sentence of the fuller text at *Cons.* 2. 6, which mentions the *rector provinciae*.³

In most surviving examples, the governor retains a vague anonymity, with the timeless flavour of representing almost any governor of any province, being designated baldly as *praeses* or *rector provinciae*. In some instances, however, the individuality of the original personnel shines through. Thus two senatorial office-holders are mentioned by name,⁴ and others of clarissimate rank are defined by office plus the honorific *amicus noster*. Only one *praeses* and one *rector* receive this mark of familiarity, and they too could be senatorial.⁵

Many of the references to the governor reflect a standard pattern. The simplest is where the petitioner is advised to approach the governor, who will act appropriately. For instance, *adito praeside provinciae . . . restitui tibi providebit*.⁶

For the petitioner this is advice, since although the law set out in the rescript is binding, the petitioner is not forced to proceed. What did it mean for the governor? Turpin suggests that the formal procedure of initiating litigation by means of a rescript (*editio rescripti*

³ As also with *FV* 293 and *CJ* 4. 38. 4.

⁴ Aelius Dionysius (*FV* 41) and Vettius Rufinus (*FV* 273). The restoration *per Iulium Menophilum spe[ctabilem virum]* at *FV* 20 must be incorrect (it is far too early for this term of rank) and it is not even clear if the person's name concealed in the corrupt text is that of a governor or some party to the case; see *PLRE* i. 597. The fragment is assigned to *CH* with a question mark by Cenderelli (1965: 160). The subscript shows that the rescript was issued at Viminacium between 14 June and 1 July of an unspecified year. 290 is possible, but the use of *auxilium* in so fragmentary a text cannot be taken as a firm inference of stylistic attribution (for use of *auxilium* by his secretary no. 17/18, see Honoré, *EL*² 151 n. 81, 153 n. 112).

⁵ *FV* 271 and *CJ* 5. 4. 11.

⁶ *CJ* 7. 60. 2.

litis contestatio), which seems to have developed from the time of Constantine, is rather a creation of our uneven evidence, which provides mainly rescripts for the third century, and letters and edicts for the fourth. He argues that the evidence is describing the same system from different angles. Thus a rescript that tells the petitioner to approach the governor is an instrument of *Prozesseinleitung*.⁷ This would appear, however, too great an interference in the usual procedure of litigation,⁸ although the emperor could presumably assign cases under his own direct jurisdiction to another judge by rescript.⁹ *Digest* texts show that the governor was not bound to take the case himself, but could assign a judge.¹⁰ However, Turpin is surely correct in saying that the petitioner desires the rescript in order to put pressure on the governor both to hear the case and give a favourable judgement. Thus, those rescripts impetrated before a case was brought may have functioned constructively, even if not legally, as an initiation of litigation.¹¹ Perhaps, therefore, the later system was a logical development from the earlier.¹²

The governor is not commanded what to do. Rather the system is presumed to be in perfect working order. With a given input of fact and law (including the law as set out in the rescript), the governor, who is assumed to have all appropriate legal knowledge, will naturally act in the correct fashion. Ignorance of the law is no defence or excuse for the ordinary citizen,¹³ so that the governors above all must be supposed to know the correct legal form. Thus, addressing Honoratus, probably the *corrector* of Italy, Diocletian says:

Non dubitandum est iudici, si quid a litigatoribus vel ab his qui negotiis adstant minus fuerit dictum, id supplere et proferre, quod sciat legibus et iuri publico convenire.

⁷ Turpin (1991: 114–18; cf. Coriat 1985: 329–31). Against Turpin, see Honoré, *EL*² 35, quoting Paul from *D* 2. 4. 15, where presentation of a petition and receipt of a rescript is not regarded as equivalent to a summons.

⁸ Honoré, *EL*² 35. Rescripts, of course, cannot overturn a sentence (*CJ* 1. 21. 1, plus examples cited in Ch. 3 Sect. iv).

⁹ Thus, possibly, *CJ* 1. 22. 1; cf. 1. 19. 1, discussed below.

¹⁰ *D* 1. 18. 8–9.

¹¹ This manner of appointment is more convincing in those few cases where the official is described by his own name, rather than being an anonymous *praeses*, although can presumably still delegate as in the examples cited in the previous note.

¹² Note, however, that the latest known rescripts, those of Valentinian in 364–5 (*Cons.* 9. 2. 9. 5–6), retain the format of the earlier material.

¹³ See *CJ* title 1. 18 (*de iuris et facti ignorantia*).

It is not to be doubted that, when litigants or those attending on a case fail to mention something, it is the judge's role to add and bring forward that which he knows is in accord with statutes and public law.¹⁴

There are multiple examples of this in the private rescripts, such as:

*praeses provinciae sciens . . . iure proferre sententiam curabit.*¹⁵

*praeses provinciae usitato more legum . . . curabit.*¹⁶

*adi correctorem, . . . qui . . . eam sententiam promet, quam iuris atque aequitatis ratio dictaverit.*¹⁷

Other striking phrases for the governor's role include:

*quod praesidis provisione fieri convenit, cuius sollertiae congruum est.*¹⁸

*[praeses] sciet, quatenus religionem iudicationis suae temperare debeat.*¹⁹

Elsewhere, the rescripts state that the governor will act *pro sua gravitate*,²⁰ *pro sua exercitatione*,²¹ *pro sua experientia*,²² or *pro sua auctoritate atque experientia*.²³

The rescript system uses a rather 'hands-off' approach. The real action depends on the governor. The emperor can even call the necessity for a petition into question:

quod autem petitis ab heredibus eius qui vendidit pretium vobis exsolvi, superfluo a nobis desideratis, quia nec praesidis experientiam possit latere

It is unnecessary to ask us for what you seek, that the heirs of the man who made the sale should pay the price to you, because this cannot be beyond the experience of the governor.²⁴

Of course, the stream of hopeful petitions was not thus deterred. Most people expected a great deal from their petitions. They were not just seeking rulings on legal points to further the impressive edifice of Roman law, but positive personal advantage against their opponents, an advantage that a favourable imperial reply was supposed to give, effectively ensuring a won case. It is not surprising that, as shown in Chapter 3 Section iv, the emperors have to point out the limitations of imperial

¹⁴ *CJ* 2. 10. 1 (letter catalogue, no. 7).

¹⁵ *CJ* 4. 8. 1.

¹⁶ *CJ* 2. 4. 32.

¹⁷ *FV* 292.

¹⁸ *CJ* 5. 74. 1.

¹⁹ *CJ* 5. 18. 6.

²⁰ *CJ* 2. 3. 18, 2. 26. 4.

²¹ *CJ* 4. 50. 5.

²² *FV* 274; cf. *CJ* 5. 51. 6, quoted below. As a form of address, this occurs at *CJ* 3.

²³ 12. 1 and *CTh* 3. 32. 2.

²⁴ *FV* 271.

²⁵ *CJ* 5. 51. 6.

rescripts. It is also possible that the contents of a rescript may be known in the province too late or that the governor may find the facts to be other than as presented by the petitioner to the emperor.²⁵

On occasion, however, more direct imperial action may accompany a rescript. Thus an imperial *adnotatio* enables a slave to bring a case before the praetorian prefect—which by definition must be happening under the imperial gaze, since the prefect is normally to be found close to the emperor. This may represent the delegation of a case under the direct jurisdiction of the emperor.²⁶

But even the most positive imperial reply must still rely on gubernatorial action. One petitioner, suffering harassment over his free status, has already appealed for protection to more than one governor, obviously to little effect. The imperial reply strongly defends his free status, but the practical advice is to approach the governor again.²⁷ Only the direct intervention of the governor is seen as being effective in this situation. Undoubtedly, the rescript lends great moral authority,²⁸ and may have been of sufficient force to give bite to the governor's latest action on behalf of the petitioner. But it is still a matter in the hands of the governor, not the emperor.

It is important to stress this aspect, to illustrate the limitations to imperial authority, both in theory and practice. This is not an original point, nor is it specific to our period. Similar points could be made from rescripts in preceding periods. The two most famous inscribed examples from earlier in the third century, those of Gordian III on the Scaptopareni and Philip on the Araguëni, both refer the petitioners to the local governor.²⁹ The preponderance of tetrarchic rescripts gives way after 294, but we need not regard the evidence on this matter as characteristic of only the early part of Diocletian's reign, before the

²⁵ This may be the problem facing Gregorius in *CJ* 1. 22. 1. ²⁶ *CJ* 1. 19. 1.

²⁷ *CJ* 7. 14. 5. For a contemporary petition to a prefect of Egypt complaining that a favourable prefectural judgement has been of little help, see *P. Oxy.* 3302 (300/1). Note also a case of repeated petitions, where the prefect's most positive act is to urge the petitioner to exercise her rights (*P. Oxy.* 3094 lines 29–30, 217/18). On the problems of enforcement, see the comments of Hobson (1993: 213–14).

²⁸ The Scaptopareni rescript of Gordian III (*FIRA*² i no. 106) tells the petitioners to look to the governor, the matter not being suitable for imperial action. This rather negative reply was still considered by the villagers to be of sufficient importance to be inscribed, and they describe it positively in their petition to the governor (see Turpin 1991: 113).

²⁹ *FIRA*² i nos. 106–7; cf. Valerian's rescript to Baetocaece (*JGRR* 3. 1020 = *Inscriptions grecques et latines de la Syrie*, vii, no. 4028). Caracalla's Takina rescript lays responsibility upon the imperial procurator (*SEG* 37. 1186 = *AE* 1989. 721).

administrative reorganization which created the dioceses.³⁰ The role of the governor is attested in the same fashion in the few later rescripts of our period, including those of Constantine³¹ and even beyond.³²

The rescripts assume a smoothly functioning system. It is part of their nature to deal with points of law, rather than deficient administration. There are conflicts over jurisdiction. Replies are given to decide the location of a trial,³³ or to explain what cannot be done on the authority of the governor of a neighbouring province.³⁴ A governor is instructed about the lines of demarcation between his own sphere and that of imperial financial officials.³⁵ Rules for the appointment of *pedanei iudices* are laid down.³⁶ All these examples seem unexceptional, providing necessary guidance for those involved in the judicial process.

But there are indications that the real situation is less than perfect, revealing the darker side of the system. An official might make legal mistakes. Cassianus is told that his adopted son is entitled to the protection of curial rank and has indeed been improperly tortured by the *praeses*.³⁷

The officials of the *fiscus* seem to have had a very acquisitive instinct with regard to citizens' property. A number of rescripts give positive replies to those seeking restoration of the fisc's seizures.³⁸ Laurentius is told to approach the *rationalis* to regain property which had been sold for too little through the collusion or deceit of the imperial procurator.³⁹ The *Caesariani* were regarded as implicitly lawless by most emperors, though the frequency with which they recur in imperial pronouncements, in ways not to their credit, shows how little real control the imperial system was able to exercise over them.⁴⁰

A handful of allusions to bribery and corruption are scattered through

³⁰ There are no references to vicars in the surviving rescripts. But note that, in respect to the problems surrounding the Donatist controversy, Constantine was working mostly through the vicar of Africa. His surviving letters to them are: Aelafius (*Optatus, App. III*), Celsus (*Optatus, App. VII*), Eumelius (*Augustine, C. Cresc. 3. 71. 82*), and Verinus (*Augustine, Don. Post Gesta 31. 54. 33. 56*). Note that on one occasion he is found writing to the proconsul, because the previous proconsul had had to stand in for the ailing vicar, Verus (*Augustine, Ep. 88. 4*). On Constantine and vicars in general, see Dupont (1973).

³¹ *FV 32. 33. 273. 274. 287. 291(?)*.
³² Note the appearance of *rector* and proconsul in the rescripts of Valentinian I, *Cons. 9. 5-6*.

³³ *CJ 3. 15. 2. 3. 19. 1. 3. 21. 1. 3. 22. 3-4. 5. 34. 5. FV 325-6*.

³⁴ *CJ 5. 34. 5*. ³⁵ *CJ 3. 22. 5* (letter catalogue, no. 25). ³⁶ *CJ 3. 3. 2-4*.

³⁷ *CJ 10. 32. 4*. ³⁸ *CJ 4. 12. 2. 10. 2. 3. 10. 3. 4*. ³⁹ *CJ 2. 36. 3*.

⁴⁰ The emperors of the period are consistent in their attempts to restrain the *temeritas Caesarianorum*. For references, see edict catalogue, no. 18.

the rescripts and can be further illuminated by other contemporary evidence. Following the precedents of his predecessors, Diocletian roundly condemns such deficiencies:

venales sententias, quae in mercedem a corruptis iudicibus proferuntur, citra interpositae provocationis auxilium iam pridem a divinis principibus infirmas esse decretum est.

Decisions gained by bribery, brought in by corrupt judges for profit, have already been decreed to be invalid by the divine emperors, even without the assistance of an appeal.⁴¹

An inscription from Aphrodisias shows the provincials praising a tetrarchic governor who could not be bought,⁴² and a Diocletianic office-holder at Lepcis Magna was credited with *innocentia*, *aequitas*, and *moderatio*.⁴³

Constantine, in a letter to the governor of Corsica in 319, decreed that the court records of governors should be copied and sent to the praetorian prefect for forwarding to the emperor.⁴⁴ In this way, all judicial decisions could be vetted by the central administration, the upright being rewarded and the negligent punished:

De eo sane, qui pretio depravatus aut gratia perperam iudicaverit, ei vindicta quem laeserit non solum existimationis dispendiis, sed etiam litis discrimine praebeatur.

Indeed, when a man gives incorrect judgement because corrupted through bribery or influence, the victim shall be granted vengeance against him not only by his loss of good name, but also through the danger of a lawsuit.⁴⁵

Judges are also threatened with *infamia*, if full documentation to support those cases referred to the emperor is not forwarded.⁴⁶ This must have been in part to avoid the governor corruptly suppressing relevant information.⁴⁷ And later Constantinian texts continue to rail against venality, especially the charges exacted to get a hearing in the first place. Poor and rich alike should have access to the governor's justice; but in practice, the rich had all the advantage.⁴⁸

⁴¹ *CJ* 7. 64. 7.

⁴² See Roueché (1989: 19–20) for what may be a tetrarchic epigram praising a governor as *inemptum*.

⁴³ See Christol (1983), who also cites other examples of such laudatory inscriptions. Note the contemporary advice on how to praise a governor for justice and impartiality (Menander Rhetor, *Treatise* II. 379, 416 = Russell and Wilson 1981: 96–7, 166–7; also pp. xxxix–xl for Menander's Diocletianic date).

⁴⁴ *Acta rectoris provinciae* are mentioned at *CJ* 2. 4. 28 (294). ⁴⁵ *CTh* 1. 16. 3.

⁴⁶ *CTh* 11. 30. 9. ⁴⁷ Greenidge (1894: 145). ⁴⁸ *CTh* 1. 16. 6–7.

The problem is not just the venality of judges. Local power and patronage mean that a whole range of pressures and influences will weaken the impartial application of the law. Judge, accuser, and witness are all vulnerable. It is not surprising that the need for truth in witnesses is stressed:

Eos testes ad veritatem iuvandam adhiberi oportet, qui omni gratiae et potentatui fidem religioni iudiciariae debitam possint praeponere.

The witnesses called to help establish the truth should be those who can place the fidelity owed to respect for justice before all types of influence and power.⁴⁹

Another rescript deals with a case of blackmail, money extorted to avoid prosecution:

Servi ob violatum contubernium adulterii accusare non possunt. Is autem, qui post dissociatum matrimonium uxorem licito iure duxerit obque intentatae accusationis ac potentis patrocinii metum ei qui accusationem instituerat aurum et argentum dedit, ad recipiendum id ulciscendamque turpis lucri cupiditatem adire praesidem potest, qui examinatis partium adlegationibus et inquisita fide veri, si quid ab eo qui innocens est ob illati criminis timorem datum esse cognoverit, quemadmodum sententiam formare debeat, evidentibus iuris placitis instruetur. Sin vero constiterit corrupti matrimonii velut mercedem ad captandam impunitatem solutam esse, eum qui etiam adversus senatus consulti censuram cum foedissimo flagitio accepit, puniri iubebit.

Slaves cannot bring a prosecution for adultery on the grounds of a violated *contubernium*. And so the man who divorced, legally remarried and then gave gold and silver to the man who initiated the accusation, out of fear of the threatened prosecution and powerful patronage, can approach the governor for the recovery of the money and the punishment of the lust for filthy lucre. The governor will examine the allegations of the parties, inquire into the actual truth, and if he discovers that the innocent party paid anything out of fear of a charge being brought, he will draw up the sort of sentence he should give on the basis of the clear legal rulings. But if it happens that as it were the price of a corrupted marriage was paid to gain immunity, the governor will order the punishment of the man who with foul criminality also accepted the money contrary to the censure of the *senatusconsultum*.⁵⁰

The emperor sets his face against any subversion of the proper procedures. Senatorial rank should not influence the location of a trial,⁵¹

⁴⁹ *CJ* 4. 20. 5.

⁵⁰ *CJ* 9. 9. 23. This assumes that the victim of blackmail was in fact innocent.

⁵¹ *CJ* 3. 22. 3. For certain serious crimes, Constantine denied to senators the right of trial in Rome, insisting the case be heard in the province where the offence was committed (*CTh* 9. 1. 1, 316).

nor should matters in the competence of a court be treated as being in the gift of outsiders.⁵² Arbitrators should be impartial.⁵³ Stratonica is allowed to recover money paid *advocationis causa* from those who failed to fulfil their undertakings, though we are not told whether this failure happened through corruption, incompetence, or chance.⁵⁴ The legal profession is in general regarded as something to be fostered for the public good.⁵⁵ Lawyers' fees, however, were included among rates of pay subject to control in the Prices Edict,⁵⁶ and Constantine legislated to ban extortionate advocates from practising.⁵⁷

By contrast, Lactantius provides a vivid portrayal of a hypocritical philosopher at Nicomedia (and therefore under the eye of the emperor), who acquired and used influence with judges, both to traffic in their decisions (*sententias venderet*) and to gain favourable judgements in his own cases.⁵⁸ Firmicus Maternus claims to have ceased to practise as an advocate on account of the greed and corruption of the powerful, of whom he says, *qui miseris hominibus ex iudiciorum metu terribiles videbantur* ('who appear terrifying to wretched men fearful of the courts').⁵⁹ It also appears from a constitution of Diocletian that judicial assessors were sometimes compelled to serve by force, presumably by governors. The whole text is worth quoting:

Studiorum labor meretur, ut hi, qui in publicis administrationibus constituti sociari sibi consiliorum participes cupiunt, spe praemiorum atque honorificentia sua provocent eos, quorum prudentiam sibi putant esse necessariam, non metu terribili et necessitate incongrua libertati.

It is the proper reward for the toil of study, that those in charge of public administration who wish to have about them people to share in their deliberations, should summon those whose skill they think needed by the hope of

⁵² CJ 9. 2. 10.

⁵³ CJ 2. 55. 3 (*sordes vel evidens gratia eorum qui arbitrati sunt*).

⁵⁴ CJ 4. 6. 11.

⁵⁵ CJ 10. 50. 1 (by encouraging legal studies, the emperor is providing for *utilitas publica*).

⁵⁶ PE 7. 72-3. Tomulescu (1976) argues that in doing this Diocletian was more hostile to lawyers than other emperors, since he imposed limits on fees per individual act in the judicial process (1,000 *denarii*, equivalent to less than one Diocletianic *aureus*) rather than for the conduct of an entire case (100 *aurei* in Ulpian, D 50. 13. 1. 12). The rates and format in the Prices Edict are consistent with the regulations in Numidia under Julian (CIL 8. 17896 = Bruns⁷ no. 103 = FIRA² i no. 64). See discussions by Chastagnol (1979; 1980: 220-4).

⁵⁷ CTh 2. 10. 3 + CJ 2. 6. 5; CTh 2. 10. 4.

⁵⁸ Lact. DI 5. 2. 4.

⁵⁹ Firmicus Maternus, *Mathesis* 4. pr. 1. Note, from a slightly later period, the famous attack on the venality of the late imperial legal profession delivered by Ammianus (30. 4. 8-22). On this see J. F. Matthews (1992: 48-50).

reward and the giving of honour, and not by means of dreadful fear and a compulsion incompatible with freedom.⁶⁰

If this text reveals governors applying pressure to those around them, immense pressures were also placed on even the most honest governor. Writing to Aristobulus, proconsul of Africa, Diocletian repeats a constitution of Claudius II, seeking to prevent litigants from mobilizing powerful patronage to try and influence a decision. This practice militates against the humble above all (*praecipue tenuiorum*). The rescript ends:

nec metuas, ne praeiudices clarissimis viris, cum divus Claudius huius rei rectorem provinciae et disceptatorem et, si res postularet, ultorem specialiter fecerit.

And do not fear that you might be being prejudicial to men of senatorial rank, since the divine Claudius specifically made the provincial governor both arbiter and, if circumstances so demanded, the avenger in this matter.⁶¹

Thus even one of the most high-ranking officials in the empire found it difficult to avoid the *gratia potentiorum*, and many judges may not have tried.⁶² Indeed, the very powerful could go so far as to defy the governor quite openly, which impelled Constantine to provide for imperial intervention in difficult cases.⁶³

Even though emperors were, therefore, aware of the distortion of the legal system by the powerful, it was not always easy for a litigant to prove intimidation. The soldier Dizo appears fortunate in that his case rested on *indubia probationis luce*. He was allowed to recover money paid (unsuccessfully) to avoid recruitment into the army. The emperors state:

qui (sc. iudex competens) memor censurae publicae post restitutionem pecuniae etiam concussionis crimen inultum esse non patietur.

Mindful of public censure after the repayment of the money, he (the judge) will not suffer that the crime of extortion should go unpunished.⁶⁴

⁶⁰ *CJ* 1. 51. 1 (letter catalogue, no. 1). It is not clear whether this is a letter delivering a rap over the knuckles to a governor or a rescript to help a harassed assessor. Lactantius (*DMP* 22. 5) complains that Galerius sent out ignorant military judges, who sat without assessors.

⁶¹ *CJ* 2. 13. 1 (letter catalogue, no. 22). *Divus Claudius* must be Claudius II Gothicus.

⁶² Note a complaint about a man who acts without fear of the retribution of the prefect of Egypt (*P. Oxy.* 3304, June 301). For a later example of someone (in this case a judicial assessor) refusing to submit to senatorial bribery and intimidation, see Augustine, *Conf.* 6. 10. 16.

⁶³ *CTh* 1. 16. 4. On the whole question of *potentiores*, see Schlumberger (1989).

⁶⁴ *CJ* 4. 7. 3.

By contrast, another petitioner is told that intimidation at the imperial court is impossible.⁶⁵ Polla is informed that her opponent's senatorial status is not of itself sufficient proof that she entered a contract out of fear:

Ad invidiam alicui nocere nullam dignitatem oportet. unde intellegis, quod ad metum arguendum, per quem dicis initum esse contractum, senatoria dignitas adversarii tui sola non est idonea.

No rank should damage anyone invidiously. And so you realize, that the senatorial rank of your opponent alone is not sufficient proof of the fear, which you say induced you to enter into the contract.⁶⁶

This is only reasonable, since otherwise senators would have had their legal capacity to make contracts undermined, if such contracts were effectively voidable at the whim of anyone with lesser rank. Indeed, the rescission of contracts made out of fear required clear proof of death threats or physical violence.⁶⁷ Thus Diocletian tells one petitioner, Procla, that rescission of a compromise agreement on the ground of fear would require clear proof of *salutis periculum vel corporis cruciatum*. However, he goes on to say that she does not need to follow this avenue of action, since the agreement was made with her slave and so could not bind her in the first place.⁶⁸

The increasing tendency for powerful local notables to act independently of or at odds with the imperial administration is seen as a feature of the late empire, but to assess the extent of corruption and violence by our period is difficult. This was already present in the system.⁶⁹ The preceding evidence, however, gives a flavour of the problems that beset the governor and litigants in applying the theoretical law, so well expounded by Hermogenian and his colleagues, to the real business of power relationships in the courts. One may indeed wonder if those rescripts miss the point, which tell the petitioner that their worries as to their legal position are unwarranted (*frustra vereris*).⁷⁰ It may take more than a theoretically favourable legal position to win a case.

⁶⁵ *CJ* 7. 67. 1.

⁶⁶ *CJ* 2. 19. 6.

⁶⁷ *CJ* 2. 19. 7, 2. 19. 9 + 4. 44. 8.

⁶⁸ *CJ* 2. 4. 13. Although we lack the full story behind this case, the supposed intimidator is as lowly in status as one could get, i.e. a slave. It is not only those of high rank who attempt to force matters to suit themselves.

⁶⁹ For the development of administrative corruption from principate to dominate, see MacMullen (1988, ch. 3).

⁷⁰ *CJ* 4. 2. 5, 4. 19. 8, 5. 37. 15 (cf. 4. 31. 11, 5. 18. 8), *FV* 285.

II GOVERNORS, EDICTS, AND THE
LIMITS OF ENFORCEMENT

Having discussed the important role of the governor with regard to legal cases and private rescripts, there follows a brief consideration of the governor's role in the effective enforcement of edicts (and letters).

The first aspect of this is the matter of promulgation of pronouncements. Three of our edictal texts are gubernatorial edicts publishing imperial texts, while other catalogue entries are references to such edicts.⁷¹ These demonstrate the importance of the governor in the promulgation of imperial enactments. This takes two forms. First, there is the active role in furthering the physical posting of the imperial will,⁷² and secondly there is the manner in which the imperial text is interpreted by that of the governor.

This is best illustrated in the case of the Prices Edict, the only instance where both published and publishing edicts survive to enable comparisons to be drawn. The geographical distribution of find-spots of the edict on stone has been interpreted as showing that such extensive permanent recording was only undertaken in a handful of provinces. Fulvius Asticus, therefore, becomes a keen promoter of the edict in Phrygia-Caria, encouraging or ordering the cities to put up the edict in durable form. And it is only in his capital, Aphrodisias, that the associated Currency Decree has been found. However, his enthusiasm appears to go further, in that his own edict, while mirroring aspects of the imperial original, tends to overstate it. For instance, the emperors do not specifically say that the edict's provisions are to last for ever, though that is what the governor thinks. Even more significant, Asticus talks of the prices as being just and fixed, equal and specific, whereas the whole point of the enactment is to provide a ceiling to prevent profiteering, while allowing for lower prices in time of plenty.⁷³ It may be that the rendering of the tariff into Greek (in two different translations) in Achaëa also represents gubernatorial initiative. The law of Constantius and Galerius on fiscal debtors, found in a Latin version in Lycia, turned up

⁷¹ Edicts nos. 4, 11a, 16, 22, 27, 30, 34, 42, 54.

⁷² Imperial pronouncements also appear, at least on some occasions, to have been communicated orally by the governor on their initial receipt (Libanius, *Or.* 1. 157; poss. Socrates, *HE* 7. 13), although there is no evidence for this in the tetrarchic period. For the reception of imperial communications, see letter no. 63a.

⁷³ All these points are brought out in Crawford and Reynolds (1975: 162-3).

in Greek at Athens. The translation of imperial Latin into Greek may reflect the attitude of the same governor in both 301 and 305.⁷⁴

On one point however, governors and emperors agree. They never tire of stressing imperial *πρόνοια*, which is mentioned by Optatus, Asticus, and Culcianus (edicts nos. 4, 11a, and 16) as well as in many of the imperial edicts and letters.⁷⁵

These three governors' edicts are each in Greek. The imperial edicts are preserved in most cases in Latin.⁷⁶ It seems reasonable to suppose that, since in the Greek east the literate were literate in Greek, knowledge of the contents of texts put up in Greek would be more quickly and widely disseminated.⁷⁷ Thus, what Asticus wrote in his edict would be the effective channel of communication. Few people would struggle with the lengthy and complex Prices Edict, when underneath was a short Greek edict which purported to explain it.

Imperial texts are published by being placed before the governor's edict. This is shown most clearly from the text and positioning of the Aezani edict of Asticus, which comes after the final chapter on sea-freight charges at the end of the Prices Edict's tariff-list. This can be corroborated from the 'edict of Milan',⁷⁸ Optatus,⁷⁹ and Constantine's law on donations.⁸⁰

Texts might be published on a whitened board (*album*) or other less durable material (thus the first persecution edict (no. 12) was torn up

⁷⁴ Crawford and Reynolds 1975: 163 n. 13.

⁷⁵ The standard study of imperial *providentia* is Charlesworth (1936). In addition to imperial enactments, note that divine or imperial *providentia* appears on a number of coin series (see lists of legends in *RIC* v/2. 680–1, vi. 703, vii. 747–8), while *pronoia* is a keyword in Constantine's *Oratio ad Sanctos* (Drake 1989: 48–9).

⁷⁶ There is no need to see Diocletian as attempting to enforce the use of Latin throughout the east. Although Latin terminology spreads, there are also new Greek terms (Cadell 1974). See also E. G. Turner (1961).

⁷⁷ Note, however, that even in a rural multilingual area (Galilee), people would rush to read newly posted edicts (Goodman 1983: 141). For a brief survey of language and literacy other than Greek and Latin in the empire, see Harris (1989: 175–90).

⁷⁸ Lact. *DMP* 48. 12 (*praelata programme tuo haec scripta*); cf. Eus. *HE* 10. 5. 14.

⁷⁹ See Crawford and Reynolds (1975: 161–2) for a restoration of the crucial passage of *P. Cairo Isid.* 1. 8. 10 to show the imperial edict preceding the gubernatorial one.

⁸⁰ *FV* 249. 10 [*legem . . .*] *quae . . . [programme]ti tuo praeferenda est*. For later examples, see *CTh* 8. 4. 6 (358): *Dat. epistula <a> praefecto, cui haec sacra fuerat antelata*; *CTh* 11. 12. 4 (407): *Praelata litteris viri in(l)ustris com(itis) sacrarum largitionum*; Val. III, Nov. 21. 1 (446), 23, and 25 (both 447): *prop(osita) in foro divi Traiani. antelata edicto Albini*; cf. *Sirm.* 14 (409): *magnificentiae tuae praelatum litteris*. Rather different is *CTh* 11. 1. 25 (398): *pp in programme Vari viri clarissimi*; also *Sirm.* 12 (408): *proposita . . . sub programme Porphyrii proconsulis*.

at Nicomedia), and are supposed to be both legible⁸¹ and posted where they can be read.⁸² Inscription in stone or on bronze must have been relatively rare, although these are of course the copies that still survive. Such permanent inscriptions carry an important symbolic value. Thus the privileges of the Brigetio Tablet are enshrined in bronze.⁸³ While it may now be commonplace to observe that Rome and other ancient cities were full of things to read, the actual reading need not be the only or major function of the inscribed text. The simple physical presence of a lengthy document in a significant position, or the fine quality of the stone (or bronze) and carving employed may create more impact than attempts to read a text in detail.⁸⁴

Many of our texts describe themselves as copies (*exempla*) of imperial enactments, and it is precisely the apparent multiplicity of such copies (at least in the east) in the tetrarchic period that is so striking. Although the emperors sometimes gave instructions for texts to be recorded on specific types of material, the effective choice must have often lain with the governor. Thus the stone copies of the Prices Edict should represent the initiative of a handful of governors.⁸⁵

Permanent copies, however, face a problem. What happens when the measures promulgated prove ephemeral and are rescinded? In classical Athens, where an inscription was in effect the original or only text of a document, a treaty, say, that was enshrined in it, could be annulled by destroying the stone.⁸⁶ In Rome, a *damnatio memoriae* would involve images of an emperor being cast down (or reused) and his name erased.⁸⁷ But when an emperor undid his own acts (surely a rare enough

⁸¹ *P. Yale* 2. 175 = Lewis (1986: 130), lines 12–15.

⁸² Thus the formula *V. D. P. R. L. P., unde de plano recte legi possit* (Valerius Proculus, *De Notis Iuris* 3. 10 at *FIRA*² ii. 455); cf. *Lex Irnitana* ch. 95 (González 1986: 180 = *AE* 1986. 333). For a deliberate attempt to make a document impossible to read, see Suetonius, *Caligula* 41. 1. For problems of tampering with posted texts, see Palazzolo (1987). Note e.g. Paulus, *Sententiae* 1. 13a. 3, 5. 25. 5.

⁸³ For the details, see letter no. 53.

⁸⁴ For a good survey of epigraphic display, see Corbier (1987). Note also the comments of Rogers (1991: 19–24) on the siting of the inscribed text of the bequest of Salutaris to Ephesus, AD 104.

⁸⁵ Vibius Serenus, governor of Baetica, set up copies of the *senatus consultum de Pisone* of AD 20 in more places than envisaged in the text's promulgation instructions. This personal enthusiasm suggests a calculated act of sycophancy. See Eck (1993: 204–8).

⁸⁶ Thus R. Thomas (1989: 51–3; 1992: 84–5).

⁸⁷ Note the reaction of Diocletian to the overthrow of the statues and portraits of himself and Maximian (Lact. *DMP* 42. 1–2; cf. Eus. *HE* 8. 13. 15; also *ibid.* 9. 11. 2 on Maximianus). Diocletian's name is also found erased on some inscriptions (Mommsen 1872); cf. Andreotti (1959: 1027–30) on inscriptions of Licinius.

event), what then followed? If the permanent manifestations of an act were not destroyed, was its original impressive symbolism reversed in the eyes of the intended audience? Or did the obsolete text become a neutral historical curiosity? After all, many other texts must have slipped gradually into obsolescence without specific revocation.

The emperor is keen for as many people as possible to know of his *benevolentia*. *Sciant omnes* and other related phrases are not infrequent.⁸⁸ Two edicts actually list the officials to whom details of an enactment have been sent, these officials being the praetorian prefects, provincial governors, the *rationalis*, and the *magister privatae*.⁸⁹ And the emperor says:

etenim ut tum et is universisque palam fieret quid . . . scripserimus, exempla subesse praecepimus ut isdem quoque omnibus cognitis provinciales nostri per benivolentiam nostram consultum sibi esse laetentur.

So that what we have written may be made plain both to them and to all, we have commanded that copies should be appended, so that, when all this is known as well, our provincials may rejoice at the thought taken for them by our benevolence.⁹⁰

However, in both cases the publication refers to the additional letters, not to the edict itself. Edicts do not contain their own posting instructions, which are a mark of letters to the officials charged with promulgation, as can be seen in the Brigetio Tablet and the 'edict of Milan'.⁹¹ Sometimes such instructions even specify (as noted above) where and on what material the imperial pronouncements should be displayed. Clearly edicts addressed to the population at large do not need posting instructions, since *their* audience can only read the already published copies. Only in an edict that is itself a publishing edict (as with that of Aristius Optatus) are publishing instructions included, though the focus is of course on the major edict that is being published rather than on the publishing edict, whose additional publication is to a large extent incidental.

Of course, this chain of promulgation descends below the provincial governor. Just as the emperors depend on Aristius Optatus to publish

⁸⁸ e.g. *Coll.* 6. 4. 4, 7; *FV* 249. 10; *CTh* 15. 14. 1; *Eus. HE* 9. 10. 10; perhaps the new Currency Decree fragments (*sci[an]t universi[ue?]*).

⁸⁹ The *edictum de Accusationibus* and *Inscr. Cret.* 1. 189 (edicts nos. 35-6).

⁹⁰ *Inscr. Cret.* 1. 189 lines 42-6.

⁹¹ Possibly also the fragmentary *PSI* 112 (316). On the question of posting instructions as denoting a formal difference between prefectural edicts and letters in Egypt, see Katsoff (1982).

their edict, so does he try to ensure that the local city officials disseminate copies of the measure to every village and place whatsoever (edict no. 4, also no. 5). Indeed, the taxation reform as effective government appears best represented by the bounday markers for villages put up by the *censitores* in Syria (edict no. 5). The so-called fifth edict issued by Maximinus (edict no. 22) caused governors to send out their own edicts and letters urging action on city officials, as did the letter of the praetorian prefect Sabinus (letter no. 54). This latter case shows that in response to Galerius' recantation edict, Maximinus did not directly issue his own edict, but rather urged his praetorian prefect to do so, as a way of distancing himself from a course of action he found distasteful. This may have happened, also, when he wrote to Sabinus after the fall of Maxentius.⁹² Only after his final defeat did he unequivocally issue an edict in his own name, conceding full toleration and restitution to the Christians (edict no. 33).

What of enforcement? Here again the role of the governor is all important. Thus the anonymous edict from Crete instructs individuals to approach the *officium* of the *rationalis* to recover their wrongly seized goods. It goes on to say:

In quibus recipendis ne quid per officialium Caesarianorum sibe procuratorum abaritam subtrahatur sciant singuli quique praesidibus provinciarum a nobis significatum esse ut, si quis vel mancipium vel pecora . . . ablatos esse perspexerit, interpellato rectore provinciae . . . remedium consequatur.

Lest anything should be taken away in the process of recovery through the greed of either the officials of the Caesariani or procurators, let each know that we have indicated to the provincial governors, that whoever sees that either slave or animals have been taken, shall obtain redress from the intervention of the governor of the province.

The provincial governors are therefore seen as the effective supervisors and enforcers of the imperial will.⁹³

The persecution edicts were only enforced in accordance with the enthusiasm of the local governor or city officials. Proximity to particular emperors or governors is the significant factor. Thus it is risky to be near Diocletian or Maximinus in Nicomedia, Antioch, or Caesarea.⁹⁴

⁹² Edict no. 30 (= letter no. 57).

⁹³ See also the edict of Constantius and Galerius, no. 18.

⁹⁴ Eus. *MP* 2 (Diocletian at Antioch); Lact. *DMP* 15 and Eus. *HE* 8. 5-6 (Diocletian at Nicomedia); Eus. *MP* 6 (Maximinus at Caesarea) and *HE* 9. 6. 3 (Maximinus at Nicomedia).

Similarly, the ferocity of the persecution in Palestine can be principally attributed to two governors, Urbanus and Firmilianus.⁹⁵ Even the census returns for the newly taxed city populations may have been used as the base of the roll-call for sacrifice at Caesarea, though whether this was mentioned in the imperial instructions or was the initiative of the governor Urbanus is unknown.⁹⁶ One reason for the argument over the application of the fourth edict in Africa stems from Anullinus' decision to order sacrifice and punish non-compliance from the early days of the persecution. Thus questions of sacrifice occur in African martyr acts, even though the fourth edict that enjoined this was not promulgated there.⁹⁷ Elsewhere, we find more local officials involved. Theotecnus was a zealous antichristian as *curator* in Antioch as well as when governor of Galatia.⁹⁸ Other *curatores*, executing the imperial will with greater or lesser enthusiasm, are shown in action in African evidence (edict no. 12). There was a great variety of reactions among these officials. For the amnesty of 20 November 303, many were more concerned with emptying the prisons than with enforcing sacrifice before so doing (edict no. 14). When Licinius conquered the east, it was only a small number of the most zealous supporters of Maximinus and his persecution who perished.⁹⁹

This flexibility of enforcement is well illustrated in the matter of punishments.¹⁰⁰ Many of our pronouncements, when they do mention punishment, are rather vague. In a number of the Constantinian texts, however, a variety of quite specific penalties appear. This is at least partly a function of the evidence, since such penalties are not relevant in the private rescripts of Diocletian. Lactantius does not record a capital penalty under the provisions of the first persecution edict (unlike

⁹⁵ Eus. *MP* 3-7 and 8-11.

⁹⁶ *Ibid.* 4. 8.

⁹⁷ Ste Croix (1954). It is perhaps not surprising, therefore, that Crispina professes ignorance of an imperial command to sacrifice (*Passio Crispinae* 1 = Musurillo 1972: 302 (no. 24)).

⁹⁸ Eus. *HE* 9. 2-3 (Antioch) and Mitchell (1982: 107-8) (Galatia).

⁹⁹ The fates of Peucetius (*rationalis* and proconsul of Asia?), Culcianus (prefect of Egypt c.301-7), and Theotecnus are described at Eus. *HE* 9. 11. 3-6, and of Firmilianus at *MP* 11. 31. Urbanus was executed by Maximinus himself (*ibid.* 7. 7).

¹⁰⁰ On late Roman judicial brutality, see MacMullen (1986) and Liebs (1985b). On Constantinian legislation, see Dupont (1955). Note, however, the disapproval of a variety of tortments inflicted by masters on their slaves (not dissimilar to 'official' punishments), which are likened to the monstrous practices of the barbarians (*CTH* 9. 12. 1). One of the few examples of explicit Christian motivation in a law of Constantine is his famous ban on branding the face made in God's image (*CTH* 9. 40. 2); cf. his abolition of crucifixion (Aurelius Victor, *Caes.* 41. 4-5; Sozomen, *HE* 1. 8. 13).

the Prices Edict), in fact Diocletian was apparently trying to enforce his will without bloodshed.¹⁰¹ But even if there was no specific penalty laid down, there was no limit set to the inventiveness of either emperors or governors in devising tortures or executions. This was exacerbated, in that many of the Christians did not suffer directly under the terms of the edict, but for treason, like the man who tore down the edict itself, those who perished under suspicion for the palace fire at Nicomedia,¹⁰² or Procopius who suffered at Caesarea for criticizing the tetrarchy.¹⁰³ Thus the punishments detailed in the constitutions of Constantine can be matched to practices during the period of persecution, for instance, burning,¹⁰⁴ condemnation to the beasts,¹⁰⁵ and the more memorable examples, such as being sewn in a sack with beasts¹⁰⁶ or having boiling lead poured in one's mouth.¹⁰⁷

The governors and other officials seem to have been free to apply whatever methods they pleased. Eusebius claims that Constantine's clemency led his governors to abandon the penalties prescribed by law.¹⁰⁸ During the persecutions, the opposite seems to have happened. Thus, in bringing the virgin Ennathas before the governor, Maxys felt free to mistreat her without the knowledge of his superiors.¹⁰⁹ In a passage filled with mockery of official virtues, Eusebius claims that judges devised new tortures as if in competition with one another.¹¹⁰ Later, he says, they pretended to be acting in a way compatible with imperial gentleness and benevolence, and stopped the executions. Attributing this change to imperial *philanthropia*, they proceeded to inflict lesser mutilations, putting out one eye or laming one leg.¹¹¹ Note, however, that Lactantius considered that the persecutors who did not kill, but only tortured, were the worst, since their aim was the apostasy of the victim.¹¹²

¹⁰¹ Lact. *DMP* 11. 8. A capital penalty was the sanction under the Prices Edict (whereas there was no specific penalty enforced by Julian in 362-3), but it is not elaborated after the Constantinian manner.

¹⁰² Lact. *DMP* 13. 2-3, 14. 2-5.

¹⁰³ Eus. *MP* 1. 1.

¹⁰⁴ Constantine: *CTh* 9. 16. 1, 9. 24. 1, 16. 8. 1. Persecution: Lact. *DMP* 13. 3, 15. 3; Eus. *HE* 8. 6. 3, 6. 8. 11. 1; also the burning of Manichees plus books ordained by Diocletian (*Coll.* 15. 3. 6); cf. Galerius' general love of cremation as a punishment (Lact. *DMP* 21. 7-11).

¹⁰⁵ Constantine: *CTh* 9. 18. 1 (cf. Eus. *MP* 6. 4-5, Maximinus and a murderer). Persecution: Eus. *MP* 3. 1, 6. 3-7.

¹⁰⁶ Constantine: *CTh* 9. 15. 1. Persecution: Eus. *MP* 5. 1.

¹⁰⁷ Constantine: *CTh* 9. 24. 1. 1. Persecution: Eus. *HE* 8. 12. 6.

¹⁰⁸ Eus. *VC* 4. 31.

¹⁰⁹ Eus. *MP* 9. 7.

¹¹⁰ Eus. *HE* 8. 12. 6-10.

¹¹¹ Cf. Eus. *MP* 8. 1; and Lactantius on Maximinus' supposed *clementia* at *DMP* 36. 6-7.

¹¹² Lact. *DI* 5. 11.

Of course, the vivid unpleasantness of the torture and death of martyrs obscures an important point. A great many of those who died, did so, not because of the efficiency with which the emperors' orders were fulfilled, but because they forced themselves upon the attention of the authorities. Thus Euplus forced his way into the governor's *secretarium* shouting 'I am a Christian', and others openly protested at public sacrifices.¹¹³ Clearly, despite the climate of fear, the majority of Christians escaped unscathed—after all, neither Lactantius nor Eusebius came to any harm.¹¹⁴ And as already noted (edict no. 12), the persecution was never even effectively promulgated by Constantius. Constantine, too, found persecution of the Donatists in Africa ineffective and was forced to abandon any attempts at coercion.¹¹⁵ It is perhaps no surprise (even if not directly connected) that shortly thereafter he was moved write to the count of Africa, informing him that he was sending out extra imperial officials to try and monitor governors, 'propter negligentiam iudicum, qui imperialia praecepta differunt' ('on account of the negligence of the judges, who are dilatory with imperial instructions').¹¹⁶ Thus the persecution is a good measure of both the ambitions and limitations of imperial power.

Two final examples illustrate the minutiae of tetrarchic government at the lower levels of the hierarchy below that of the governor. On the one hand, the village boundary inscriptions of the *censitores* in Syria show imperial tax reforms apparently effective in the remotest of places (edict no. 5). The detailed activity of administration is also chronicled in the Panopolis Papyri, but with added evidence for areas of frustration and obstruction. Thus the strategus has great difficulty in getting the co-operation of the president of the *boule* of Panopolis in preparations for (and in despite of) an imminent imperial visit. One letter will suffice to illustrate this:

To the President. With regard to the supplies of the *annona* ordered to be stored up in various places in preparation for the auspiciously impending visit of our ruler the emperor Diocletian, the Senior Augustus, I have both a first and a second time instructed you with all speed to select receivers and overseers of provisions for the most noble soldiers who will enter the city, in order that no delay may occur in regard to this most honourable duty. But since up to the

¹¹³ *Passio Eupli* (Musurillo 1972 no. 25); Eus. *MP* 2. 1, 4, 8, and 11. 15.

¹¹⁴ Lactantius presumably lost his post at Nicomedia, but does not seem to have suffered in any other way. Eusebius may have been imprisoned for a time in Egypt (Barnes, *CE* 149).

¹¹⁵ Optatus, *App.* VIII (May 321).

¹¹⁶ *CTh* 15. 1. 2 (Apr. 322). For the date, see Barnes, *NE* 129.

present nothing requisite has been achieved by you, now for the third time I enjoin you to take the appropriate measures with regard to this honourable visitation, and also carry into execution the orders of Aurelius Isidorus, the procurator of the Lower Thebaid (*P. Beatty Panop.* 1. 53-9 (trans. Skeat); cf. 1. 109-19).

Thus the frustrations of a minor official show how the travel plans of an emperor and the orders of high officials became more difficult to enforce the further they proceeded down the hierarchical ladder or away from the emperor.¹¹⁷

¹¹⁷ See e.g. Aurelius Victor, *Caes.* 39. 44-5 on the *frumentarii* and *agentes in rebus*, and edict catalogue, no. 18 on the *Caesariani*.

The Emperor in Action

I IMPERIAL HEARINGS

The texts so far examined represent three categories of document—edicts, letters, and private rescripts—documents issued in the emperor's name, which were signed by him and then posted or dispatched. But some imperial pronouncements require imperial activity of a different sort and a handful of texts from the codes show the emperor in action, making pronouncements in the most direct possible form, by oral delivery.¹ The emperor, therefore, has a more immediate control over the words he says. The necessity for some minimum facility at public speaking was part of the imperial office.² This directness does not mean, however, that what is said has not been prepared with the advice of others, either beforehand or during these occasions.

In these texts, the emperor appears in his traditional role, acting as judge (delivering *sententiae* or *decreta*)³ and hearing embassies (granting privileges and immunities by means of extrajudicial pronouncements called *interlocutiones de plano*).⁴ In only one passage is the *consilium* stated to be in attendance, though in two instances other persons are indicated as being present.⁵

1. *CJ* 10. 48. 2. *Pars actorum Diocletiani et Maximiani* AA. 13 February in a year before 293.⁶

This text is described as *pars actorum*, and is thus an extract from

¹ Already noted are the verbal instructions of Maximinus (letter no. 54) and a possible address of Constantine to the Senate (letter no. 60). On the personal involvement of earlier emperors, see Honoré, *EL*², ch. 1.

² On imperial *eloquentia*, see Millar (1977: 203–6).

³ Emperors continued to hear cases in the 4th cent. Note that some courtiers tried to persuade Valens to hear cases himself, but under the influence of his praetorian prefect he decided that it was beneath his dignity to concern himself with the details of private litigation (Ammianus 30. 4. 1–2).

⁴ See Nörr (1983).

⁵ On the presence of the *consilium* at hearings, see Millar (1977: 119–22, 230, 234–9).

⁶ The protocol implies a date during the joint rule of Diocletian and Maximian without the Caesars and so before 293.

the imperial records of the proceedings. The protocol then reads as follows: *Inductis Firmino et Apollinario et ceteris principalibus Antiochensium adstantibus Sabinus dixit*. It looks, at first, as if Diocletian is giving audience to a delegation from Antioch, apparently headed by Firminus and Apollinarius. Such an interpretation leaves the *adstantibus* rather pendent. It may be that it should refer to the names of members of the *consilium* in attendance on the emperor, which have been lost from the protocol, by analogy with the surviving *acta* of Julian.⁷ But another interpretation, taking the protocol as accurate, would picture the rest of the *principales* of Antioch already standing near the emperor as interested parties, when Firminus and Apollinarius are led in.⁸ These two are approaching the emperor for a ruling to protect them from curial duties and are arguing against the claims of the rest of the *ordo*. This is, therefore, an imperial *cognitio* (or perhaps appeal hearing),⁹ and it should be located in Antioch itself.¹⁰

The text shows the emperor addressed by one Sabinus,¹¹ though of the speech only fragmentary traces of Greek survive. The emperor replies with a ruling in Latin,¹² on the exemption of *ex protectores* and *ex praepositi* from civil and personal *munera*. Thus, if the scenario given above is correct, Firminus and Apollinarius held one or other of these ranks and gained the favourable judgement that they sought.

Along with the exchange between Constantine and Agrippina (no. 5), this is one of the few truly bilingual *acta*. We do not know the extent if any of Diocletian's knowledge of Greek and, therefore, whether an interpreter was necessary.

2. *CJ* 9. 47. 12. *Imp. Diocletianus et Maximianus AA. in consistorio dixerunt: . . . sine die et consule* (before 293).

This text shows Diocletian in consistory forbidding the condemnation of decurions' sons to the beasts. When the people cry out (in protest?), he states that the *vanae voces populi non sunt audiendae* in deciding matters of condemnation or acquittal.

It is not entirely clear how we should visualize this scene. There is

⁷ *CTh* 11. 39. 5.

⁸ Bianchini (1975: 334–6).

⁹ *Ibid.* 342.

¹⁰ The most plausible year for Diocletian's presence in Antioch, during a Feb. before 293, would be 287. See Barnes, *NE* 51.

¹¹ *PLRE* i. 791 (Sabinus 1) supposes that he is an advocate. Bianchini (1975: 336) tentatively (and I think dubiously) identifies him with Sabinus 17 (*PLRE* i. 794), *censitor* in Syria in 297; cf. trans. in edict catalogue, no. 5.

¹² Bianchini (1975: 342) says that the emperor 'non può adottare altra lingua che quella ufficiale della cancelleria'.

general agreement that the protocol is incorrect and that the emperor is not in the consistory, which was not yet in existence. Rather, he is with his *consilium*. It is likely that the inscription originally read *Imp. Diocletianus A. in cons(ilio) dixit*, and was later given a 'modernized' expansion.¹³ The intervention from the populace, which prompts the emperor's reply, shows that the occasion is not a restricted ceremony, but public, whether at an outdoor tribunal or in an indoor audience chamber. Other examples of interjections are attested for some martyr trials.¹⁴ Constantine urged governors to conduct trials at a tribunal before crowds rather than hidden in a private chamber.¹⁵

The emperor is making two separate points: one about penalties for *honestiores*, and one about reaching a verdict. It may be that the affair relates to a particular case, in which the populace believes both that a decurion's son is guilty of some offence and that he should therefore be thrown to the beasts. This passage need not be taken as an indication of Diocletian's general attitude to popular acclamations in the circus. The point here is more specifically legal.¹⁶ It does appear, however, that the free speech of the circus crowd in Rome, which so delighted Constantius II in 357,¹⁷ was not to the taste of Diocletian in 303.¹⁸ But Diocletian was content to preside as alytarch over the Olympian games at Antioch¹⁹ and built a new circus at Nicomedia, dedicating it at the end of his vicennalian year on 20 November 304.²⁰ He presumably found some provincial crowds quite manageable. Constantine made specific provision for acclamations that praised or blamed governors to be brought to his notice.²¹

¹³ See Crook (1955: 96–7), Bonfils (1981: 27 n. 64), and Amarelli (1983: 98 n. 35).

¹⁴ Eus. *MP* 8. 6 and 11. 15–19 (bystanders); *Passio Irenaei* (Musurillo 1972 no. 23) 3. 1–2 (relatives); *Acta Phileae* (Musurillo 1972 no. 27) (Greek), lines 203–10 and (Latin) ch. 4. 6–8 (lawyers).

¹⁵ *CTh* 1. 16. 6 (331). Note the contrast in the *Acta Eupli* between the governor's *secretarium* into which Euplus forces his way and the public tribunal before which the subsequent trial is held.

¹⁶ Cameron (1976: 181 n. 5).

¹⁷ Ammianus 16. 10. 13–14.

¹⁸ So reported by Lact. *DMP* 17. 2. Zosimus 2. 29. 5–2. 30. 1 (derived from Eunapius) supposes that Constantine was also driven from Rome by popular hostility, but Libanius, *Or.* 19. 19 reports Constantine's tolerance of Roman abuse (cf. Cassiodorus, *Variae* 1. 27. 4–5).

¹⁹ Malalas 12. 310. On Julian's problems at the hippodrome in Antioch, with general discussion of imperial reactions to free-speaking and abuse, see Gleason (1986).

²⁰ Lact. *DMP* 17. 4. The creation of circus-palace complexes is a notable feature of the tetrarchic capitals, to be found also at Thessalonica, Sirmium, Antioch, Trier, Milan, Aquileia, and Rome (Maxentius' complex on the Via Appia). See Humphrey (1986, ch. 11).

²¹ *CTh* 1. 16. 6. 1 (331). On the development and importance of public acclamations in the circus, see Cameron (1976, esp. chs. 7 and 9), and Roueché (1984; 1989, nos. 83–4).

3. *CJ* 9. 1. 17. *Pars sententiae*. 9 January 299, possibly at Antioch.²²

Sitting in judgement, Diocletian delivers his *sententia* on a case.²³ He denies to one of the parties the ability to bring a criminal prosecution against his opponent, though allowing him instead to bring a civil suit before the governor. The emperor here uses equity as his guiding principle.

Iniquum et longe a beatitudine saeculi nostri esse credidimus, ut Thamastus accusandi eius (sc. Symmachus) haberet facultatem, in cuius domo eum, licet ingenuum, a prima tamen aetate fuisse constabit.

We believe it to be inequitable and out of keeping with the blessedness of our times that Thaumastus should have the right to accuse the man in whose home, although of free birth, he lived from his earliest years.

This attitude can also be seen in a private rescript, where the petitioner finds his legal duties as *tutor* bringing him into an undesired conflict with his sister's family. The emperor agrees that this conflict is one that *Humanitatis ac religionis ratio non permittit*. However, a solution is devised and the petitioner is instructed:

Iuxta formam igitur, quam consulti dedimus, praetorem adiri oportet, ut et iusto tuo desiderio et pupilli ipsius commodo consulatur.

Therefore, according to the form which we have given after being consulted, you should approach the praetor, so that consideration may be given both to your just desire and the advantage of the ward.²⁴

Thus law and family relations are both satisfied. Similarly, in the oral *sententia*, decency is maintained, while not robbing the parties of their legal capacities.²⁵

4. *CTh* 7. 20. 2 (*CJ* 12. 46. 1).²⁶ Given in *civitate Velovocorum*, 1 March 320.²⁷

This gives an account of the meeting between Constantine and a group of veterans. Constantine enters the *principia*, being greeted with

²² Diocletian was at Antioch on 5 Feb. (*CJ* 8. 53. 24).

²³ The text gives no indication of the emperor's role in any discussion with his *consilium*. Contrast evidence for Severus in Paul's *Decreta* (Honoré, *EL*² 20-5).

²⁴ *CJ* 5. 62. 23.

²⁵ Cf. also *CJ* 9. 1. 14, where the emperor seems to be trying to persuade a mother not to prosecute her son for attempting to murder her.

²⁶ See also the version of the text proposed by Pharr (1946: 22-3).

²⁷ Seeck (*RG* 176) dates it to Mar. 326 and presumes that this is the edict to which reference is made in *CTh* 7. 20. 1, dated by him to Apr. 326 (see edict catalogue, no. 57).

a *salutatio*²⁸ by legionary prefects and tribunes and *viri eminentissimi*. He is then hailed by the veterans, in words including the wish *dei te servant*, clearly not a Christian acclamation.²⁹ There is then a brief exchange with the emperor,³⁰ led by one of the veterans, Victorinus, during which they complain of their apparent lack of immunity from *munera*. Constantine replies with what must be a prepared text,³¹ detailing their privileges in this regard. That a letter³² is already drawn up is shown by the words *fisco nostro quoque eadem epistula interdiximus*. This letter may be one addressed to all the veterans,³³ which they can cite according to their need, or a circular letter sent to all relevant officials.

That much of the circumstance surrounding the meeting is unrecorded is suggested by two papyri from Egypt.³⁴ One is a court record of AD 63 showing the prefect Caecina Tuscus ruling on the privileges of veterans.³⁵ The second appears to be an unofficial record of the same event made for the veterans concerned, which shows that, in addition to hearing the prefect's final pronouncement, they had already met with and petitioned him on three occasions in the preceding week.³⁶ This earlier parallel strengthens the likelihood that Constantine had already met or been petitioned by the veterans a few days previously and so had had time to have an answer prepared.

The date and place are uncertain. The consular year should be either 320 or 326, when Constantine was near Serdica and Heraclea respectively.³⁷ However, the closest equivalent to the place of issue, as given in the subscript, would be *civitas Bellovacorum* (Beauvais) in Northern

²⁸ Compare this *salutatio* to the similar occasion before Caracalla, though in a non-military setting (*CJ* 9. 51. 1).

²⁹ The *CJ* text replaces the plural *dei* by the singular *deus*.

³⁰ The emperor calls them *conveterani*. This identification of the emperor with his soldiers continues a manner of speech from the principate. See Campbell (1984: 423–4).

³¹ Pharr (1946: 27) suggests that the text must have been composed already and is now formally issued as an 'oral edict' in reply to the complaints. He compares it to Marcus delivering an oration in the praetorian camp at *FV* 195. In fact, the Marcus text is an *interlocutio de plano* (cf. Nörr 1983; Honoré, *EL*² 29), and the text here can probably also be described as such, even though it was additionally issued as a written document.

³² Pharr (1946: 21–2) supposes that the emperor issues a special grant of privilege (*indulgentia*) by means of an edict. Its contents are then conveyed to the fisc in a letter (*ibid.* 25 n. 30).

³³ The following text in the code (7. 20. 3) is addressed *ad veteranos*.

³⁴ The connection between the *CTh* text and the papyri is suggested by Marcone (1987).

³⁵ *P. Fouad* I 21 = *FIRA*² iii no. 171a = Smallwood (1967) no. 297a.

³⁶ *P. Yale Inv.* 1528 = *FIRA*¹ iii no. 171b = Smallwood (1967) no. 297b. The interrelationship of the two papyri is discussed by Westerman (1941). The veterans met the prefect at some time in the last few days of Aug., then again on 1 and 2 Sept., and the prefect delivered his final statement on 4 Sept.

³⁷ Barnes, *NE* 74, 76–7.

Gaul.³⁸ Barnes changes the date to 307, to fit this identification. He argues that, whereas the text is often taken as showing that Constantine's army was not Christian after 312, it should in fact antedate Constantine's open espousal of Christianity.³⁹ This remains highly speculative.⁴⁰ No other surviving Constantinian text in *CTh* predates the overthrow of Maxentius.

There is also the problem of trying to explain the presence of the *eminentissimi viri* in the protocol. Only the praetorian prefects held this rank, and at some point not long after 324 (certainly before 331) they were upgraded to clarissimate status. Thus, unless the text is simply in error, the date must allow for more than one praetorian prefect present with Constantine. If the year is 320, the prefects must be Petronius Annianus and Junius Bassus (the latter the prefect of Crispus). Crispus must, therefore, have been present also,⁴¹ although if he ever was in the protocol, he has since been struck out. In 326 the prefects could be identified as Constantius and Evagrius.⁴² The dating must remain uncertain, though I would prefer not to alter the transmitted date of 320.

5. *CTh* 8. 15. 1 (undated).⁴³

In the second judicial example, Constantine exchanges words with a female litigant, he in Latin, she in Greek. This combination is highly unusual. Court proceedings are often recorded in both languages, but only in so far as protocol is in Latin and dialogue in Greek.⁴⁴ In some cases, though the judge converses with the parties in Greek, he may use Latin to address his staff⁴⁵ or deliver his final decision.⁴⁶ On occasion, emperors do speak Greek officially,⁴⁷ but the material of our period

³⁸ Accepting Seeck's dating of 326 for *CTh* 7. 20. 1–2, Gaudemet (1982) makes Florianus, recipient of *CTh* 7. 20. 1, governor of Belgica II and so at Beauvais.

³⁹ Barnes, *NE* 69 n. 102.

⁴⁰ See the criticisms by Lane Fox (1986: 622, 777 n. 41) and Marcone (1985: 553). In addition, since Constantine had only become emperor eight months before and had only appeared in the west a year before that, it is rather premature for him to call them *conveterani*, though he had already campaigned against the Franks.

⁴¹ For the evidence of Crispus as Caesar being present with Constantine, see Barnes, *NE* 83.

⁴² Barnes, *NE* 131.

⁴³ The text may belong after 316/17, when the first substantial Greek-speaking areas came under the sway of Constantine.

⁴⁴ This is the most common format among some thirty bilingual proceedings included in his listing by Coles (1966: 55–63). See also his discussion on pp. 36–8. From our period, note *P. Oxy.* 2952 (315).

⁴⁵ *P. Lips.* 40 and possibly *P. Oxy.* 3619, line 24, both between 315 and 324.

⁴⁶ *P. Thead.* 13 and *P. Ryl.* 653 (both c.320).

⁴⁷ e.g. Julian at Constantinople in 362 (*CTh* 11. 39. 5). Other *CTh acta* are in Latin: 1. 22. 4 (Gratian), 4. 20. 3 and 11. 39. 8 (both Theodosius).

is almost exclusively in Latin, even most of our Greek texts being translations.

Eusebius refers to Constantine's composition of Latin speeches, which are then put into Greek by special translators.⁴⁸ This need not be taken as a sign of his lack of capacity in the language, or of general deficiency in oratorical ability. Augustus, who had a considerable amount of rhetorical training and certainly knew Greek, preferred to compose in Latin and have his text translated into Greek by others.⁴⁹

At the opening of the council of Nicaea, Constantine addressed the assembly in Latin, a speech which was then relayed in Greek. Later on, however, the emperor did converse with the bishops in Greek, in which tongue Eusebius describes him as *μηδὲ... ἀμαθῶς*.⁵⁰ This passage is meant to demonstrate both Constantine's learning and his affability towards Christian bishops, who were now enjoying imperial favour for the first time.

Eloquent fluency in both languages is something that causes comment. Strategius, who was recommended to Constantine on account of his bilingualism to investigate certain religious matters, earned from the emperor the nickname Musonianus for his competence.⁵¹

Therefore, though Constantine may not have felt entirely at home speaking Greek, he could probably have used it in court had he so wished. Perhaps imperial dignity preferred Latin.⁵²

The text is also notable, since Agrippina is the only woman addressed in the Theodosian Code. She is prepared to argue with the emperor and gains a favourable decision, despite her poor legal position.⁵³ While it seems likely that the essence of the exchange is preserved in our fragment, the protocol is much abbreviated, so that the full context and court procedure cannot be reconstructed.

II THE EMPEROR AND HIS ADVISERS

All these texts offer vignettes of the emperor in action. The direct speech, however, need not preclude preparation or consultation, though

⁴⁸ Eus. VC 4. 32.

⁴⁹ Suetonius, *Divus Augustus* 89. 1. See Millar (1977: 204).

⁵⁰ Eus. VC 3. 13. 1-2. Praxagoras of Athens states that Constantine was sent by his father to Diocletian's court in Nicomedia to be educated (*FHG* iv. 2), so that he may have been able to learn Greek from a relatively young age. For further thoughts on his education, see Sect. iii below.

⁵¹ Ammianus 15. 13. 1-2. For a poss. bilingual tetrarchic governor, see Roueché (1989: 20).

⁵² Cf. n. 12 above.

⁵³ These points are well made in Bianchini (1984: 1205).

none of the passages shows this taking place. There is no break in the exchange with the veterans before the long final speech. It is probable, as suggested above, that the emperor had already been in contact with the veterans a few days earlier, so that a text had been prepared in advance of this meeting. Nor is there any indication that Constantine consulted his *consilium* before pronouncing on the case of Agrippina. This may have taken place and an answer been written down during a delay not recorded in the text. Martyr trials show the governor retiring and writing down his decision before reading it out.⁵⁴ One pre-Diocletianic *CJ* text does show consultation before decision,⁵⁵ although the final wording may still be the emperor's own, rather than that of any adviser.⁵⁶

The extent of the influence of the *consilium* or other advisers on imperial pronouncements is difficult to gauge. The best example is that of Diocletian's procedure before initiating the Great Persecution.⁵⁷ Lactantius describes how Galerius in confidential discussion attempted to persuade Diocletian to act against the Christians.⁵⁸ Unable to resist the forcefulness of his junior, Diocletian decided to test the *sententiae amicorum*. Lactantius claims that Diocletian's attitude to consultation was to avoid it, when doing good, so as to monopolize the credit, but to draw on the advice of others, when doing evil, so as to spread the blame. Thus in this case, he sought advice. The answers, motivated by hatred, fear, or flattery, produced a consensus in favour of persecution.⁵⁹ Even then, Diocletian hesitated until he had consulted the gods;

⁵⁴ See *Acta Maximiliani* 3. 1 (Musurillo 1972 no. 17), *Passio Agapae, Irenae, et Chionae* (ibid. no. 22) 4. 4 and 6. 3, *Passio Crispinae* (ibid. no. 24) 4. 1, and *Acta Eupli* (ibid. no. 25B) (Latin) 3. 1. Later imperial legislation states that the governor's *sententia* is only properly valid if written down and then read out (*CJ* 7. 44. 2, *CTh* 4. 17. 1-4).

⁵⁵ *CJ* 7. 26. 6 (Philip).

⁵⁶ Honoré (*EL*¹ 43; *EL*² 27) believes that the text is not in the style of the *a libellis* and therefore reflects that of the emperor himself or another lawyer in the *consilium*.

⁵⁷ Lact. *DMP* 11. 3-8. See Amarelli (1983: 112-16).

⁵⁸ For a recent argument trying to shift the blame back from Galerius to Diocletian, see Davies (1989), though much of his inference seems to be based on dubious martyr acts.

⁵⁹ One likely advocate of persecution is Sossianus Hierocles, who as governor of Bithynia was close to the court at this time and wrote a major work *Philalethes* addressed to (not against) the Christians. Lactantius portrays him as important in instigating the persecution (*DI* 5. 2. 12; cf. *DMP* 16. 4). Note also an anonymous antichristian writer and philosopher at Nicomedia, though Lactantius claims that he ended up in disrepute (*DI* 5. 2. 4-11). Some writers have identified him with Porphyry, but this seems unlikely (Barnes 1973b: 438-9). On the influences leading to the persecution, see further Barnes (1976d; *CE* 21-2).

in this case the oracle of Apollo at Didyma.⁶⁰ This account by Lactantius, however tendentious, illustrates consultation in action. What effects it may have had on the wording or tone of the persecution edicts themselves is unknown.

The *consilium* is still attested in existence under Constantine.⁶¹ In addition, a number of advisers who influenced his legislation are known by name. Hermogenes is credited with direct influence on legislation, as adviser, disseminator, interpreter, and modifier of imperial laws, both at the court of an unnamed tyrant, probably Licinius, and later at that of Constantine.⁶² It has been suggested that he was one of the first imperial quaestors. However, though the creation of the quaestor is attributed to Constantine, there is little evidence to show the office operating in its later legislative manner at this early stage. There is no need for Hermogenes to be quaestor for him to influence law-making under Constantine.⁶³ A similar role can be assigned to Sopater⁶⁴ and possibly Hosius of Cordoba.⁶⁵ Indeed, in addition to any general influence Hosius may have had on Constantine's Christian or other policies, one surviving law may reflect his influence directly. This law on manumission in church (though not the first), which is addressed to him as bishop, may be addressed to him precisely because he requested it.⁶⁶ Thus it could be based on his *suggestio*, as became the norm for late imperial law-making.⁶⁷

Divine influence is also a factor, as in the example of Diocletian and Didyma given above. The most direct case is that of Licinius before his

⁶⁰ This consultation is mentioned rather inaccurately by Constantine (at Eus. VC 2. 50) and may also be connected with a fragmentary inscription from Didyma. See Fontenrose (1988: 208-10).

⁶¹ CJ 6. 7. 2, 7. 1. 4.
⁶² See Millar (1977: 100). Barnes (1987: 218-20) supposes that the two emperors in question were Gallus and Julian.

⁶³ Zosimus 5. 32. 6 assigns the creation of the late imperial quaestor to Constantine. The view against Hermogenes as quaestor is argued by Bonfils (1980: 184-5). The earliest attested quaestors belong to 354 (see the *fasti* in Harries 1988: 171, plus 172 n. 1, where the evidence for Hermogenes is described as 'inadequate'). Barnes (1987: 219-20) suggests that Hermogenes was *magister libellorum* to Julian.

⁶⁴ Eunapius, V. *Soph.* 462. Constantine kept him at his side as an assessor, when he was in public.

⁶⁵ Hosius seems to have resided at court c.312-26 and was high in favour (Eus. VC 2. 63 and Socrates, HE 1. 7. 1), being involved in dealing with both the Donatist and Arian controversies. The evidence, however, is rather slender for the role of Hosius. For a sceptical approach, see Warmington (1989).

⁶⁶ CTh 4. 7. 1 See also Ch 6 Sect. iv

⁶⁷ The earliest attested references to *suggestiones* are CTh 12. 1. 33 (342) and 8. 4. 4 (349). The reference to the *suggestio* of Hermogenian in 304 (*Passio Sabini*) is clearly anachronistic, if not fictitious (see letter no. 41).

battle against Maximinus in 313. Lactantius claims that the emperor was visited in a dream by an angel, who told him the wording for a prayer to be said by his army. On waking, Licinius summoned a *notarius* and dictated the text as he had dreamed it.⁶⁸ Licinius is also supposed to have consulted the oracle of Apollo at Didyma before his final conflict with Constantine.⁶⁹

III CONSTANTINE AND THE *ORATIO AD SANCTOS*

The examples discussed in Section i are atypical texts from the codes. There remains one last unusual imperial text to consider, though only briefly. This is Constantine's *Oratio ad Sanctos*, appended to Eusebius' *Life of Constantine*. There is general agreement that the speech was written and delivered by Constantine. It is normally identified as the discourse that Eusebius promises to append to the *Life* as an example of those written by the emperor in Latin and translated by others into Greek.⁷⁰ It was given on Good Friday⁷¹ in an unknown year at an unspecified location. Allusions to place and time in the text are open to differing interpretations.⁷² Serdica in 317,⁷³ either Serdica in 321 or Thessalonica in 323 or 324,⁷⁴ Antioch in 325,⁷⁵ and Nicomedia in 325⁷⁶ have all been proposed.

It is not clear whether it was delivered in the original Latin or the Greek version. Extensive use is made of Virgil's Fourth Eclogue. Lane Fox argues that the text employed must have been a Greek translation of Virgil, since points being made depend on the Greek wording and could not arise from the Latin original.⁷⁷ Thus, on his view, the speech

⁶⁸ Lact. *DMP* 46. 3–7. Barnes (*CE* 63) suggests that Constantine furnished Licinius with the prayer, though its neutrality may rather suggest a compromise between the two emperors. Note that the prayer refers to *summe deus*, whereas Constantine's later prayer for the army was emphatically addressed to a sole god, *monos theos* (Eus. *VC* 4. 20. 1); cf. Judge (1983: 19).

⁶⁹ Sozomen, *HE* 1. 7. 3. This is regarded as fictitious by Fontenrose (1988: 227).

⁷⁰ Eus. *VC* 4. 32.

⁷¹ Hall (1998: 96) argues that this is an anachronism and that it must be either the Easter Saturday vigil or Easter Sunday morning.

⁷² Drake (1985) doubts that an exact date or place can be established, though he prefers c. 315 or possibly 325.

⁷³ Barnes (1976b: 423).

⁷⁴ Barnes, *CE* 73. 323 n. 115.

⁷⁵ Lane Fox (1986: 632), against which see Hall (forthcoming), arguing that a synod could not meet on an Easter weekend.

⁷⁶ Thus Barnes (1989a: 116 n. 5), following the proposals of an unpub. thesis by D. Ison.

⁷⁷ Lane Fox (1986: 629–30). For the opposite view, that some points dependent on the Latin are lost in the Greek, see Fisher (1982: 177–82) and Wright (1993).

must have been both composed and delivered in Greek from the first. We have already seen that Constantine was not ignorant of Greek, so that such an interpretation is possible.

However this may be, the important point to note is that it represents a true composition of the emperor. The exact extent of help or advice in its creation is impossible to gauge, though will largely depend on existing views of Constantine's intelligence and education. There seems no reason to hold the view that Constantine was rude and uneducated, although I feel that Barnes overstates the simple effect that learned men at court may have on the imperial personages there,⁷⁸ as well as the significance of works dedicated to or artists patronized by the emperor as a mark of his personal prowess.⁷⁹ The composition of the oration should have been within the capabilities of the emperor, perhaps with the added help of a Hosius or Lactantius.⁸⁰

The controversy is not unlike that which surrounds the composition of the *Assertio Septem Sacramentorum* by Henry VIII. The king undoubtedly received help in the creation of the work, perhaps in the assembling of raw material, maybe further than that. Luther and other contemporaries attributed the work entirely to someone else, while modern scholars tend to regard the king as the true author despite the help he received.⁸¹ Quite how much assistance in composition is needed before a text ceases to be that of the person assisted? Eusebius talks of

⁷⁸ Barnes, *CE* 73-4. One source suggests Constantine's lack of education (*Anonymus Valesianus* I (*Origo Constantini*) 2. 2), but others stress his culture (Eutropius 10. 7. 2, *Epitome de Caesaribus* 41. 14).

⁷⁹ Barnes (*CE* 47-8, 72) stresses Constantine as patron, but this need not reflect personal accomplishments. Note that one of the writers cited as dedicating works to him should rather be dated to the reign of Constantine VII Porphyrogenitus (Cameron 1984). Diocletian too was a patron (after all, it was at his court that Constantine would have received some of his education), although there is less readiness in modern scholars to see him as well educated.

⁸⁰ Barnes, *CE* 74, 324 nn. 125-8. Barnes accepts Hosius as the dedicatee of Calcidius' commentary on the *Timaeus* (demonstrated as early 4th cent. by Dillon 1977: 401-8), a work which may have influenced the *Oratio*. However, a late 4th-cent. date for the *Timaeus* commentary is still preferred by the editor of the text, with Hosius identified as a patrician from Milan (*PLRE* ii. 572 (Hosius 2) and Waszink (1984); cf. Lausberg (1991: 177-9), making Calcidius and Macrobius contemporaries c.400). The text of the letter from Calcidius to Hosius is given by Waszink (1975: 5-6). For the possible influence of Lactantius on the *Oratio*, see e.g. Amarelli (1978: 113-70) and Bryce (1989: 17-18).

⁸¹ For a cautious view (Henry cobbling together raw materials researched by others), see Scarisbrick (1968: 112-13). More generous is J. Ridley (1984: 127-8), who sees the text as a suitable product of an intelligent amateur like Henry. At the time of the break with Rome, of course, the king tried to distance himself from the work (Scarisbrick 1968: 326).

Constantine the theologian and philosopher, who burns the midnight oil in pursuit of his studies, and publicly displays his piety and admonishes his corrupt courtiers through his oratory.⁸² Whatever exaggeration there is in this description, I do not think that it need be taken as inaccurate in revealing genuine imperial industry and creativity. The emperor may have had helpers, but was no robot engaged in the mindless repetition of what others put into his mouth.

⁸² Eus. *VC* 4. 29-30, 55.

II

The Powers of the Lesser Tetrarchs

I INTRODUCTION

The martyr Procopius criticized the tetrarchic multiplicity of rulers by quoting Homer; 'It is not good that there should be many lords; let there be one lord, one king.'¹ Certainly, the existence of multiple co-rulers creates problems in understanding the constitutional complexities involved, as regards both the relationship of the *Augusti* to one another, and the relative powers of *Augusti* and Caesars. There are two questions to ask: who could and did issue the different types of pronouncement, and can these be identified in our surviving material? Where were they enforced?²

The view of Mommsen and Seeck was that only the senior Augustus possessed full legislative competence.³ Upon this basis, the list of law-making seniors is as follows:

Diocletian	284-305
Constantius I	305-6
Galerius	306-11
Maximinus (disputed claim)	311-12
Constantine	312-37

The surviving legislation from the codes is largely harmonious with this view. The vast majority of laws come from the periods of the seniority of Diocletian and Constantine. The places of issue, posting, or receipt for most of these laws point to Diocletian in the east (284-305) and to Constantine in the west (313-24) as the source. This is not surprising. For instance, it is only logical that the Gregorian and Hermogenian Codes as a project of Diocletian compiled by imperial

¹ Homer, *Iliad* 2. 204-5. Procopius was immediately beheaded (Eus. *MP* 1. 1-2). Compare Lactantius' criticisms of the tetrarchy at *DMP* 7. 2 (also implied at *DI* 1. 3, as part of an argument for monotheism). Note also Eusebius' celebration of the empire reunited under a single ruler in 324 (*VC* 2. 19).

² For surveys of this question, see Amelotti (1961) and Voci (1982: 697-716).

³ Seeck (*RG* 49) describes Constantine in 312 as acquiring *das Recht der Gesetzgebung* and says 'Früher können also seine Gesetze nicht beginnen.'

officials at his court should be filled with his rescripts and other pronouncements.

There are a number of cases, however, where attribution of a law or rescript to the senior emperor entails forced emendations to the text in question (usually its subscript). I think it is preferable to suppose at least limited legislative or epistolary competence for the other rulers, which of itself does not deny an overall jurisdiction to the senior emperor.

Of course, the question of how far the senior emperor could enforce a theoretical superiority in practice is quite different. Legislative unity is most likely under Diocletian the unchallenged senior, who created the tetrarchy and whose court was the hive for most of the legal industry of the period. Further, the sources, whether panegyric or invective, agree on the harmony of Diocletian and Maximian,⁴ so that it is unlikely that any conflicts over ill-defined areas of authority would have arisen. It is also clear that Diocletian and Galerius expected Maximian and Constantius to follow suit over the persecution of the Christians, which they did, though Constantius complied as minimally as possible.⁵ Two years later, Diocletian (or Diocletian and Galerius) had little difficulty in arranging the abdication without consulting the other two tetrarchs.⁶

After the abdication in 305, harmony soon became disharmony.⁷ According to Lactantius, Galerius was already treating the empire as his own, in anticipation of the death of Constantius.⁸ Once this event had indeed given him seniority, he found it challenged, first by Constantine, then by Maxentius. It is probable that Galerius' granting of

⁴ Lact. *DMP* 8. 1 mimics the panegyrists' stress on the unanimity of the imperial brothers (e.g. *Pan. Lat.* 10(2). 9. 2-5; 10(2). 11. 1-7; 10(2). 13. 2; 11(3). 11. 1-12.5). On harmony in tetrarchic iconography, see Rees (1993); cf. Kolb (1987) ch. 8, on the Arch of Galerius at Thessalonica.

⁵ Lact. *DMP* 15. 6. Note for comparison that Valentinian issued *CTh* 4. 6. 4 in the names of himself, Valens, and Gratian, as valid for the whole empire, a constitution which Valens as junior accepted, although he disapproved (Libanius, *Or.* 1. 145). Even in the 5 cent., after the legislative separation of east and west, Anthemius consulted Leo (he was Leo's nominee to the western empire) and promulgated Leo's resultant constitution (Anthemius, *Nov.* 2-3).

⁶ Lact. *DMP* 18. 8. Lactantius, however, portrays Galerius as having already cowed Maximian into submission (and sent Severus to Italy) before tackling Diocletian; other evidence suggests that Diocletian had previously exacted an oath binding Maximian to abdicate (*Pan. Lat.* 6(7). 15. 6; see Kolb 1987: 143-50). Whatever the truth, there is no indication that Maximian or Constantius actively opposed decisions made in the east. For attacks on the credibility of Lactantius, see Kolb (1987: 131-9) and Rougé (1992).

⁷ For hostility between parts of the empire, with the seas unnavigable and travellers treated as spies, see Eus. *HE* 8. 15. 1 (referring to 303-13); cf. *HE* 8. 13. 11. This of course only enhanced the status of Constantine as reunifier of the divided empire (*HE* 10. 9. 6 and *VC* 2. 19).

⁸ Lact. *DMP* 20. 1-24. 2.

recognition to the former and denial of it to the latter made little difference to the manner in which the two functioned as rulers in the west.⁹ However, Maximinus felt constrained to counterfeit support for the Christian tolerance of Galerius in 311 and Constantine in 312, an acknowledgement that he was not an entirely independent ruler.¹⁰

There follows a discussion of the courts of the Augusti and Caesars in general, followed by examination of the evidence in relation to each of the three principal types of pronouncement: edicts, letters, and private rescripts. The final section deals with Licinius. This is a lengthy case-study, considering both the possible attribution to him of various laws and the more general question of the fate befalling the legislation of defeated and damned rulers.

II THE TETRARCHIC COURTS

It is generally assumed that each Augustus must have had a complete *comitatus* and all palatine ministries,¹¹ just as the *Notitia Dignitatum* in the late fourth century listed the same officials in both east and west.¹² The presumption should be, therefore, that each Augustus could issue every type of imperial pronouncement, though whether these were valid empire-wide is uncertain.

The palatine accoutrements of the Caesars are less certain. The model normally taken is that of Constantius II and his Caesars, whom he kept on a tight rein, regulating their lives and appointing their officials. Such an analogy is dubious. Constantius' practice more likely arose either from his own suspicious nature or else from the system operated by Constantine over his sons before 337, even though Constantius claimed Diocletianic precedent.¹³ An anecdote in Eusebius, however, shows Constantius I successfully deceiving the messengers of Diocletian and very much in control of his own system.¹⁴

The only explicitly attested official for a tetrarchic Caesar is Eumenius, Constantius' *magister memoriae*. Even here there is doubt. While Constantius appointed him as professor at Autun and arranged for his salary out of imperial funds,¹⁵ he also had to refer to Maximian over

⁹ Lact. *DMP* 25. 1-26. 4.

¹⁰ See letters nos. 54 and 57.

¹¹ e.g. A. H. M. Jones (1964: 1. 51).

¹² Thus *Notitia Dignitatum*, *Or.* 11 14 and 18-19 = *Oc.* 9-12 and 16-17.

¹³ Ammianus 14. 11. 10 (Constantius to Gallus). Julian reversed this view by representing a very self effacing Diocletian at *Caesars* 315A-B.

¹⁴ Eus. *VC* 1. 14.

¹⁵ *Pan. Lat.* 9(4). 13

his palatine post.¹⁶ Thus, either Eumenius held office directly under Maximian and not Constantius, or else Maximian had an overall say on appointments at the Caesar's court.¹⁷ But, since Constantius sent Eumenius a letter (in the name of all the tetrarchs), one presumes that the Caesar had at least a *magister epistularum*.

It remains unproven whether the Caesars had praetorian prefects. The inscription showing Hermogenian as one of two prefects between 293 and 305 implies that there were only two prefects at this time, one for each Augustus.¹⁸ This does, however, raise the question of chains of command. Would vicars of dioceses in the sphere of a Caesar bypass their nearby tetrarch for the more distant praetorian prefect, for whom they were technically deputies? I think they would not. In the Donatist controversy, Constantine corresponded directly with successive vicars of Africa,¹⁹ and other direct imperial contacts with provincial governors demonstrate that the praetorian prefect was not a necessary intermediary.²⁰ The absence of prefects from the courts of the Caesars should not have significantly hampered their governance of their territories.

However, this lack of prefects may not have lasted after 305. While the theory may have been for the new Augustus, Constantius, to appoint his own prefect in May 305, while Maximian's in Milan ceased to hold office, the Caesar Severus may well have taken over Maximian's prefect. It seems plausible that Constantine took over his father's prefect in 306 and, although he subsequently accepted appointment as Caesar from Galerius, it is hard to imagine him then divesting himself of such an official. Therefore, though the evidence is largely lacking, the Caesars should have possessed effective administrations of their own, with or without praetorian prefects.

It is also plausible to suppose that co-Augusti and Caesars could issue at least some rescripts, whether replies to private petitions or enquiries from officials. Each member of the college should have been the focus for his immediate sphere²¹ and such replies were in any case

¹⁶ Ibid. 9(4). 6. 2.: *hoc ipsi palatio parentis sui munus invexerit*.

¹⁷ See Rodgers (1989: 257–8). Peachin (1989: 184 n. 54) argues for only one *magister memoriae* in the west, with another in the east. Note, however, the junior *adiutor memoriae* attested with Galerius at Caesarea in 293 (Rea *et al.* 1985).

¹⁸ See Ch. 4 Sect. iv. ¹⁹ On Constantine and vicars, see Dupont (1973).

²⁰ For examples where the prefects did act as intermediaries, see *FV* 35 and 37; cf. Optatus, *App.* VIII.

²¹ The importance of a localized imperial focus in Gaul, without which local emperors or usurpers arose to fulfil local needs, is brought out in Van Dam (1985: 28–36) in reference to the period 250–360. The prominence of Julian, despite the curbs placed upon

not issued by general promulgation, but for specific cases in the first instance. The point of having multiple rulers ceases, if only the senior retains any real power. Some at least of these replies, by design or accident, found their way as authoritative texts into the legal sources.

III THE CATEGORIES OF PRONOUNCEMENT

(a) *Edicts*

As possessors of tribunician power, all members of the imperial college should have had the usual *ius edicendi* of any magistrate. Even governors issued edicts and sent out letters to officials under them. Each tetrarch must have done likewise. Under the theory of collegiality, such edicts should have been in the names of all the rulers. Whether they enjoyed validity outside the issuing ruler's territory is unclear.²²

There is no evidence for edicts issued by anyone other than Diocletian under the first tetrarchy. The sole exception is the Damascus incest edict, which Barnes suggests was issued by Galerius Caesar on the orders of Diocletian.²³ This makes sense, inasmuch as Galerius was already in the east and thus there is no need to envision a post-haste journey for Diocletian from Nicomedia (18 March)²⁴ to Damascus (1 May). The edict should perhaps be seen as local rather than general in motive and scope. It may be connected with preparations for the Persian war, as an attempt to win divine favour, extirpating a custom hateful to Roman tradition but long associated with Persia in the Graeco-Roman mind. Constantius II later issued an incest law to the provincials of Phoenice.²⁵ Thus, the Damascus edict may also be caused by and directed towards conditions in the same area.

After 305, there appear to be edicts emanating from rulers other than the senior. Thus the law of Constantius and Galerius on fiscal debtors should probably be attributed to Galerius on the basis of the find-spots in Achaea and Lycia (edict catalogue no. 18). The so-called fifth persecution edict looks like an action of Maximinus Caesar alone, as does the relaxation of persecution by Constantine immediately on his

him by Constantius II, is especially notable. Van Dam does not mention the passage cited above about Constantius I, but (if Eusebius is here reliable) it shows the close co-operation between the Caesar and the local elite against outside interference.

²² Note that in any case there does not seem to have been a fixed division of territory between Diocletian and Galerius in 293-305 or between Galerius and Licinius in 308-11 (Barnes, *NE* 196-8). ²³ *Ibid.* 62 n. 76.

²⁴ *CJ* 5. 72. 3.

²⁵ *CTh* 3. 12. 1 (342).

accession (edicts nos. 21a and 22). There are also edicts of Licinius discussed below.

Edicts are thus produced by both Augusti and Caesars.

(b) *Letters*

Except for the dubious persecution letter to Venustian (letter no. 41), there are no certain letters of Maximian. The rescript of Diocletian from Alexandria to the proconsul of Africa makes it likely that he is also the origin of missives to the other western office-holders.²⁶ Letter no. 50 from the prefect of Egypt in June 306 appears to attest a letter or edict of Galerius, before the death of Constantius. The letter of Maximinus (catalogue no. 57) to Sabinus signifies a half-hearted compliance with the actions of the collegiate senior.²⁷ The Brigetio Tablet however, clearly shows Licinius sending an authoritative letter of his own. This and other Licinian texts are discussed below.

For the Caesars, there is a clear example of a letter surviving in the Codes. The letter of 305 to Verinus given at Apollinopolis Magna must have emanated from Maximinus (catalogue no. 48). Survival of this and the other second-tetrarchy laws was probably via the Gregorian Code and should be assigned to Maximinus.²⁸ This conclusion is strengthened if another letter to Verinus (as governor of Syria) given at *Demesso* in 294 is assigned to Maximinus at Damascus in 305.²⁹ The letter from Constantius to Eumenius is not a legal text, but one *CJ* text from Agrippina (Cologne?) may be assigned to him as a letter or possibly a private rescript (letter catalogue, no. 27).

Thus it is clear that both Augusti and Caesars could issue authoritative and effective letters.

(c) *Private Rescripts*

Since rescripts are not laws, and are issued as a statement of what the law already is in relation to a specific case, there is no reason why the authority to issue rescripts should be denied to any member of the imperial college. While it is clear that petitioners did go from the spheres of other tetrarchs to the court of Diocletian, it is equally clear that they could also approach Maximian. Thus one African petitioner travels

²⁶ Pasqualini (1979: 116-17).

²⁷ The letter from Sabinus (no. 54) to those beneath him was based solely on the authoritative verbal instructions of Maximinus.

²⁸ As already argued in Ch. 2.
²⁹ Letter catalogue, no. 28, assigned with a question mark to Galerius at Damascus; cf. letter no. 49.

to Diocletian at Sirmium to gain a response, while a second African approaches Maximian in Carthage during a rare enough imperial visit.³⁰ Western rescripts have already been discussed in Chapter 4. It is clear that at least one genuine western rescript is represented in *CJ*, another in the *Consultatio*, with several preserved in the Vatican Fragments. Honoré has identified the authors of some of these texts as *magistri libellorum* with periods of office at the courts of successively the eastern and the western Augustus (see Chapter 4). Whether or not this movement between the courts is accepted, it is clear that Maximian must have had his own chancery *magistri*. Indeed, since there is no clear evidence for him issuing other types of legislation, it has been supposed that the *ius respondendi* was the only issuing authority that he possessed.³¹ However, even supposing all western places of posting and issue in *CJ* and elsewhere are correct, the number of surviving rescripts of Maximian remains small.

There are no certain private rescripts attributable to other co-Augusti. *CJ* 5. 42. 5, the one possible private rescript of the second tetrarchy, cannot be clearly assigned to any particular member of that college, though as suggested above Maximinus Caesar is the most likely candidate.

One rescript, *FV* 32, lacking place of posting, dates from August 312, shortly before Constantine's victory over Maxentius and the senate's bestowal upon him of seniority in the imperial college. The existence of this sole pre-Milvian Bridge constitution of Constantine has been used to support the notion already mentioned with regard to Maximian, that the lesser Augusti had only the *ius respondendi*. But Constantine must have been effective ruler in his territories from his accession in 306.³² Further, this rescript occurs during the period after the death of Galerius when there was in any case no undisputed senior. One final rescript, *FV* 34, has been assigned on dubious grounds to Licinius (see Section ivb below).

What of the Caesars? There are no certain private rescripts attributed to Constantius or Galerius. There is a possible text from Cologne, mentioned above, which ought therefore to derive from Constantius.³³ There are also four rescripts of 294 from Antioch, thus possibly from Galerius.³⁴ Mommsen emended these to Panticium or Anchialos,

³⁰ *CHV* 2. 1 and *FV* 41.

³¹ Seston (1946: 234).

³² Thus Amelotti (1961: 275-6).

³³ *CJ* 5. 12. 21. See Barnes, *NE* 60. Even less likely is *FV* 291, although it could theoretically have emanated from Constantius at Trier in 300.

³⁴ *CJ* 4. 29. 18, 5. 12. 24-5, 8. 31. 2.

matching them consistently to Diocletian's itinerary.³⁵ This also supposes the plausible corruption, that the less familiar names should be altered to the well-known. These dubious examples make it difficult to refute Mommsen's claim that the Caesars did not possess the *ius respondendi*.³⁶

However, of the rescripts listed for Maximian, *FV* 282 was posted at Milan in February 286.³⁷ Thus on the chronology as given by Barnes, with Maximian as Caesar on 21 July 285 and Augustus on 1 April 286,³⁸ it must have been issued by Maximian while still Caesar. Unfortunately, the date(s) for Maximian's nomination and the subsequent iteration of his titlature are the most uncertain of all the tetrarchic rulers. No combination of *dies imperii* satisfactorily explains the numeration of his titlature in Latin inscriptions and Egyptian regnal formulae. There is dispute over whether he was Caesar before becoming Augustus,³⁹ as well as over the dates for his appointment to either rank. The majority of writers however suppose that he was Caesar in 285 and Augustus in 286.⁴⁰ Kolb, the most recent writer to treat this matter in detail, suggests that Maximian was created Caesar in Nicomedia on 13 December 285 and was elevated to be Augustus later, in 286. He argues that the rescript at Milan is a sign that Diocletian intended Maximian as Caesar to hold a strong position.⁴¹ While not necessarily accepting Kolb's new suggestion for Maximian's *dies imperii*,⁴² I think that the general outline of the chronology does suggest that Maximian

³⁵ Mommsen (1860: 438). The dates are very close to those of rescripts containing Pantichium and Anchialos genuinely preserved in the subscripts. Note that a further two texts from Antioch with the date *CC cons.* are assigned to the year 300 (*Constantio III et Maximiano III CC cons.*): *CJ* 3. 3. 3, 9. 21. 1 (ibid. 445). ³⁶ Ibid. 419.

³⁷ Since this is the petitioner's second request for a rescript, Maximian must have issued the first one even earlier in the year, although it could represent a matter dealt with much earlier by Carinus. ³⁸ Barnes, *NE* 4.

³⁹ The literary evidence for him as Caesar is set against epigraphic and numismatic silence. But note that Licinius' short-lived appointees in 316 and 324 are similarly Caesars in the literature and Augusti on coins (Barnes, *NE* 15).

⁴⁰ The various opinions are listed by Kolb (1987: 24). For attempts to tabulate the progression of Maximian's imperial and tribunician iterations, see Seston (1946: 364–5), Pasqualini (1979: 247–9), and Festy (1982: 227–9) (also Barnes, *NE* 252).

⁴¹ Kolb (1987: 42–3).

⁴² Because Lactantius seems to cite dates that are important as imperial festivals, Kolb supposes that the date for Diocletian's collapse on 13 Dec. 304 should signal that the emperor did not appear for an expected celebration (ibid. 28–32). He identifies this as the anniversary of Maximian's elevation to the purple. He rejects (p. 31 n. 72) the silence of the Beatty Panopolis papyri, which record other imperial occasions from Nov. to Jan. (Diocletian's accession, 20 Nov.; Diocletian's birthday, 22 Dec.; the Caesars' third consulate, 1 Jan.), arguing that eastern papyri would not reflect a western event (thus also

was still Caesar when he issued this rescript. However, it is not certain that the powers of Maximian as a brief sole Caesar would be repeated in the arrangements of the formal tetrarchy from 293.

Thus, while it is clear that all Augusti could issue private rescripts, the evidence for the Caesars does not provide certain proof.

IV LICINIUS⁴³

(a) *The Defeated 'Tyrant'*

The fate of the legislation of Licinius is here examined in more detail than that of the other junior members of the imperial college. I want to consider how he is viewed in the legal sources (mainly as a usurper) and discuss the identification of possible Licinian laws in the Codes. The answers to these questions may help to illuminate both the relative powers of co-emperors and the fate of the laws of the losers in the sources.

As the ultimate survivor among the tetrarchs, it is the victorious Constantine who dominates the historical record. Even though Licinius was the saviour of the east from Maximinus, he never gained the accolades given to the Christian Constantine, who naturally received the overwhelming support of Christian writers. Licinius, however, also failed to win a glowing press from pagan sources.⁴⁴ Zosimus, who is consistently hostile to Constantine and brands him an oath-breaker both over the first civil war against Licinius and for the execution of Licinius after his fall,⁴⁵ refrains from giving a favourable view of Licinius as a contrast with Constantine. Even in the pages of Lactantius, where Licinius is shown as blessed with an angelic visitation from God before his victory over Maximinus, he still emerges in a rather sinister light as both miserly and cruel.⁴⁶ Finally, his record as a persecutor himself in Eusebius' *Ecclesiastical History* is an added afterthought that pales

Duncan-Jones 1978: 550 n. 33; and 1990: 115, arguing that army donatives in Egypt might honour the birthdays and accession days of only the eastern Augustus and possibly the eastern Caesar). But if so, why would Diocletian in Nicomedia have been expected to celebrate it? Had Maximian's imperial anniversary occurred in Dec., the papyrus would surely have noted it.

⁴³ This section is a modified version of Corcoran (1993).

⁴⁴ For Licinius in the Latin sources, see Andreotti (1956). In Greek, the *Anonymus post-Dionem* (FHG iv. 199) is described as having 'una certa simpatia' by Brizzi (1979: 59).

⁴⁵ Zosimus 2. 18. 1, 2. 28. 2.

⁴⁶ Lact. *DMP* 46. 3 (visit from an angel), 46. 12 (miserly), 50. 5 (cruel).

beside the account of Galerius or Maximinus, although *The Life of Constantine* is fuller and more successful in making him an anti-Christian villain. Lacking passionate commitment to either side, he is pushed into the background.⁴⁷

Reconstructing his activities as emperor is not easy.⁴⁸ The fullest account of his government is provided by Eusebius in the *Ecclesiastical History and Life of Constantine*. Eusebius, of course, is concerned to show Licinius changed by madness into a persecutor.⁴⁹ But the depiction of his misrule extends further. He is charged with a variety of standard crimes such as cruelty, greed, and lust.⁵⁰ But he is also portrayed as the ungrateful junior, plotting against his benefactor and relative,⁵¹ and attacked as an innovator in various matters of marriage and the rights of the dying, and as a deviser of harsh taxation.⁵²

Constantine, in retrospect, called his defeated rival 'the common enemy of the world'⁵³ and in the legal texts branded him as a 'tyrant' or usurper.⁵⁴ Thus, not long after the defeat of Licinius, Constantine decreed the abolition of the laws of the 'tyrant', while shortly afterwards making it clear that this was not an excuse for the reversal of all earlier legal transactions.⁵⁵ His position had been similar after the overthrow of Maxentius.⁵⁶

The aftermath of the violent overthrow of a ruler is a dangerous time. The victor will wish to establish himself by damning his predecessor's government, perhaps conducting a purge. But the accusations and counter-accusations need to be held in check, and delators

⁴⁷ In later times, however, Serbian princely families were happy to include him in their genealogies (Ševčenko 1978: 10). Memories of him also survived in some inaccurate interpretations of the statuary and buildings of Constantinople (*Parastaseis Syntomoi Chronikai*, chs. 11, 68, 74 with comments of Cameron and Herrin 1984: 155 n. 1, 185, 239).

⁴⁸ For a good account, see Barnes, *CE* 68–72.

⁴⁹ Eus. *HE* 9. 9. 12, 10. 8. 8–9, 10. 8. 14, 10. 9. 2–3; *VC* 1. 56. 1–2. For his persecution measures, see also edict no. 49.

⁵⁰ Eus. *HE* 10. 8. 11–13, *VC* 1. 54. 2–55. 3. Variations upon these charges are made against many contemporary emperors, mostly the persecutors.

⁵¹ Eus. *HE* 10. 8. 2–6, *VC* 1. 49. 1–50. 2.

⁵² Eus. *HE* 10. 8. 12–13 = *VC* 1. 55. 1–3.

⁵³ τὸν κοινὸν τῆς οἰκουμένης ἐχθρὸν (Constantine's letter to Alexander and Arius at *AE* 2. 66).

⁵⁴ *Tyrannus* in Latin carries the meaning of 'usurping or illegitimate ruler'. Such a ruler may be seen as additionally possessing the cruelty and capriciousness which we associate with the word 'tyrant'. The most important Theodosian title in this regard is *CTh* 15. 14. *de infirmendis his quae sub tyrannis aut barbaris gesta sunt*.

⁵⁵ *CTh* 15. 14. 1 (the MS date is 16 May 324 (*xvii kal. Ian.*), emended by Seeck (*RG* 99, 174) to 16 Dec. (*xvii kal. Ian.*), so as to follow the defeat of Licinius); *CTh* 15. 14. 2, Feb. 325.

⁵⁶ *CTh* 15. 14. 3, Jan. 313. See letter catalogue 61 for the date.

have to be restrained.⁵⁷ Total abolition of the acts of a ruler renders all legal and administrative processes during his reign open to question. This is a recipe for chaos. Pronouncements by the victor, therefore, try to temper *damnatio memoriae* with stability.

The emperor is a source of law and precedent, but a 'tyrant' emperor is seen as constitutionally illegitimate and his acts cannot be accepted as enjoying a validity emanating from himself as usurper.⁵⁸ Therefore, the ability for him to make law is denied, but law already exists outside and independently of him. The concept of *vetus ius* is therefore very useful (as discussed in Chapter 3 Section viii). Where the 'tyrant' conforms to it, his actions should not be challenged. The majority of private legal actions under his rule are therefore safeguarded. Indeed, even Constantine admits that rescripts emanating from himself can be *contra ius*. Thus he says:

Contra ius rescripta non valeant, quocumque modo fuerint impetrata. Quod enim publica iura praescribunt, magis sequi iudices debent.

Rescripts contrary to law are not to be valid, in whatever manner they have been obtained. For the judges should rather follow what the public laws command.⁵⁹

Since private rescripts are not strictly speaking laws, but authoritative statements of what the law already is, and since many texts point out to the petitioner what a rescript cannot do, any rescript that attempted to do so, whether through corruption, error, or ignorance, would be *contra ius*.⁶⁰ Such a situation would be the enslavement of the free-born under a tyranny, noted by Constantine as a product of the rule of Maxentius.⁶¹

As the safeguards in Constantine's laws seem to cover only rescripts, it is clear where abolition would be directed in the case of Licinius. Major edicts of Licinius, containing unwarranted innovations, would appear to be the most vulnerable form of his enactments. Eusebius

⁵⁷ Contrast the reprisals and accusations in Africa after Maxentius' suppression of Alexander (Zosimus 2. 14. 3-4) with Constantine's restraining of delators after the fall of Maxentius (CTh 10. 10. 1-2; Pan. Lat. 12(9). 20. 4). On delation in the late empire, see Gaudemet (1980).

⁵⁸ For a discussion of the problems associated with *rescissio actorum* in the later empire, covering most of the points mentioned here, see Sautel (1956: 480-91).

⁵⁹ CTh 1. 2. 2, Aug. 315 (edict no. 40). This text and the difficulties of interpretation over rescripts *contra ius* are discussed by Simon (1977: 11-16).

⁶⁰ On the status of rescripts, see Ch. 3 Sects. iii and iv.

⁶¹ CTh 5. 8. 1 (314); cf. CJ 7. 14. 4 (293) for someone enslaved under the Palmyrene regime c.270.

protests: 'Why is it necessary to record singly and severally the deeds of the God-hater and how this man, who was the extreme opposite of lawful, invented lawless laws?'⁶² He charges Licinius with altering the ancient, wisely established laws of the Romans with respect to marriage and the rights of the dying.⁶³ Yet in 320, Constantine himself issued an edict that fundamentally altered marriage and testamentary law,⁶⁴ annulling much of the *Lex Papia Poppaea* of AD 9, a law which Constantine himself calls *vetus ius*. Eusebius praises this legislative act of Constantine,⁶⁵ while criticizing Licinius for enacting new legislation on the same topics at the same time. *Vetus ius* is a flexible concept, and attitudes towards its revision may depend on attitudes towards the emperor doing the revising.⁶⁶

The same Theodosian title (*CTh* 15. 14), that contains the three laws cited above, records other similar legislation by later emperors on the aftermath of the overthrow of a 'tyrant' or usurper. Arcadius and Honorius state that the time of the tyranny (of Eugenius) shall be considered as though it had not been, although safeguards for certain private legal acts are provided with respect to the usurpations of Magnentius, Magnus Maximus, and Eugenius.⁶⁷ However, unlike Magnentius, Magnus Maximus, and of course Maxentius, who had received only brief and uncertain recognition, if at all,⁶⁸ Licinius was no usurper. His appointment as Augustus by Galerius at Carnuntum in November 308 was as legitimate as could be. He had shared rule with Constantine, though sometimes in conflict, for over a decade after the overthrow of Maximinus in 313.

This leads to another problem. Constantine clearly differentiates between the laws of Licinius and his own.⁶⁹ But Licinius was a tyrant only in retrospect. All imperial pronouncements will have included

⁶² Eus. *HE* 10. 8. 11.

⁶³ *Ibid.* 10. 8. 12.

⁶⁴ For the details see edict catalogue, no. 47.

⁶⁵ Eus. *VC* 4. 26. 2-4.

⁶⁶ See Ch. 3 Sect. viii. It is ironic that Constantine's own statutes were regarded as unwarranted innovations by his nephew, Julian, who styled him *novator turbatorque priscarum legum et moris antiquitus recepti* (Ammianus 21. 10. 8) and repealed some of his laws, re-establishing *antiquum ius* or *vetus ius* (*CTh* 2. 5. 2, 3. 1. 3).

⁶⁷ *CTh* 15. 14. 5, 8, 9. For other relevant laws, see *CTh* 16. 10. 5 (353, Constantius revokes Magnentius' permission for nocturnal sacrifice); *CTh* 11. 12. 1 (340, Constantius abolishes immunities granted by Constantine II, on whose *damnatio memoriae*, see Barnes 1993: 51-2, 253-4 n. 18).

⁶⁸ Constantine sufficiently recognized Maxentius as to have some (extremely rare) coins minted in his name at Trier (*RIC* vi. 41, 156, 158, 217). Constantius II never recognized Magnentius. Magnus Maximus enjoyed brief and temporary recognition from Theodosius I (see J. F. Matthews 1975: 179; for the coinage, see Kent 1993: 81-2).

⁶⁹ *CTh* 15. 14. 1.

the names of both emperors as joint issuers. In the theory of imperial collegiality, the action of either was the action of both. Therefore, Constantine's own legitimate acts would have to be emended to remove Licinius. And the abolition of Licinius' acts would involve the invalidation of texts bearing Constantine's name as well.

This creates complications of titulature. Eusebius could emend passages in the *Ecclesiastical History* where he was favourable to Licinius.⁷⁰ But although Licinius was deleted from the heading of Galerius' toleration edict,⁷¹ he remained embedded in the 'edict of Milan'. It is the only document of the period where the anonymity of collegiate plurals gives way to the naming of both emperors as they agree on the measures to be taken.⁷² This surviving mention of Licinius is only to be expected, as any of his legislation in favour of the Christians would be that most likely to be left untouched.⁷³

A case of the certain survival of a Licinian enactment is the Brigetio Tablet, issued from Serdica in 311.⁷⁴ The heading bears the names of Constantine and Licinius, with the name of Licinius erased. It clearly remained valid after his fall.⁷⁵ Thus, a pronouncement of Licinius survived. Note, however, that this text comes from territory already under

⁷⁰ Eus. *HE* 9. 9. 1, 12. The principal variants are listed by Barnes (1980: 196–7).

⁷¹ Eus. *HE* 8. 17. 5. No ed. of *HE* includes Maximinus in the edict heading, presumably a deliberate omission by Eusebius. It may also be wondered whether, conversely, Eusebius disassociated Constantine and Licinius from Maximinus' pronouncements by omitting them from the two texts in which the name of Maximinus alone appears in the heading (*HE* 9. 9a. 1 and 9. 10. 7). Note that the petition against the Christians sent to Maximinus from Lycia and Pamphylia was addressed to Maximinus, Constantine, and Licinius (*CIL* 3. 12132). The reply to them, and the similar reply to Tyre, which Eusebius (*HE* 9. 7. 2–3) ascribes to Maximinus alone (though without directly quoting the opening formula), should have included all three emperors as issuers.

⁷² Lact. *DMP* 48. 2; Eus. *HE* 10. 5. 4. The emphasis may also be designed to underline the dropping from the imperial college of the defeated but not yet dead Maximinus.

⁷³ As noted for Maxentius by Barnes (1973a: 46). In another Christian context, Licinius is preserved in the inscription of a letter from Constantine to Probianus in Africa (Augustine, *Ep.* 88. 4 = *C. Cresc.* 3. 70. 81). He is also mentioned as emperor with Constantine in trial *acta* at Optatus, *App.* II (ed. Ziwsa, p. 203). Both Maximinus and Licinius are implied by the address A. GGG. NNN. in the letter of Anulinus to Constantine at Augustine, *Ep.* 88. 2.

⁷⁴ *FIRA*² i no. 93. For the details on the date and recipient, see letter catalogue, no. 53.

⁷⁵ This creates a problem, since the distinction between legionaries and *auxilia* implicit in the tablet had been replaced with new categories by Constantine by 325, in a law that already refers to earlier legislation on the matter. However, although these new categories would have affected serving soldiers, veterans with privileges under the old system would surely have retained them, rather than losing them by retrospective reclassification. Thus there would have been a necessity for the continued public display of the tablet, perhaps for a number of years beyond 324.

the rule of Constantine from 316, and therefore long before any *damnatio memoriae* of Licinius.⁷⁶ It is possible that the fate of Licinius' enactments in the territories he lost in 316 differed from what happened after 324.

By contrast, where Licinius had not been so generous in his dispositions, they were revoked in no uncertain terms. For instance, in *CTh* 8. 4. 1, dealing with the liturgical immunity of *cohortales*, Constantine abolished what the tyrant decreed (*iniquissime tyrannus constituit*) and enacted more favourable rules of his own.⁷⁷ Thus the good regulations of Licinius survive quietly, while the bad are undone with a flourish.

(b) Texts in the Legal Sources outside *CTh*

Licinian constitutions are not easy to identify. When Theodosius II ordered the compilation of his code, he chose to start with the first Christian emperor. Except as a tyrant, Constantine's colleague Licinius is not acknowledged. Only for the purposes of consular dating does he survive, but with the A. for Augustus removed.⁷⁸

Of other sources, *FV* contains four constitutions with headings implying two Augusti at this time, though without naming names, and only one is strictly accurate.⁷⁹ A further three give Licinius as Augustus in the consular date.⁸⁰

One of these constitutions has even been attributed to Licinius. Two private rescripts deal with the question of the sale of children.⁸¹ Apparent differences of approach to the subject-matter and variations in style have been used to assign the first to Constantine and the second to Licinius, but this does not stand up to close examination.⁸²

⁷⁶ Seston (1937: 212-14) argues that the titulature of Constantine shows that the imperial titles on the upper band of the tablet frame were added c. 317-21.

⁷⁷ The MS date is 315, but is emended by Seeck (*RG* 176) to 326. There is also a papyrus edict which appears to show Constantine in 324 reversing an increase in the age-limit for immunity from liturgies or poll-tax made by Licinius (Barnes, *NE* 234-7). See edict catalogue, no. 56.

⁷⁸ The sole exception is *CTh* 11. 27. 1, where the date is probably wrong in any case and should be emended from 315 to 319 (see App. D).

⁷⁹ *FV* 33-6. The headings read 'Augg et Caess'. This is inaccurate except for *FV* 36, dated 317/19. A Constantinian plurality of Augusti and Caesars occurred only from 317 to 324. Such headings, however, may suggest that *FV* was compiled at precisely this time, shortly before 324. I think that Millar (1977: 244 n. 30) is wrong to doubt the date of *FV* 34 by supposing that the heading implies the first tetrarchy, since *FV* employs some strange styles in its inscriptions and nowhere else uses this heading for the first tetrarchy (see Volterra 1973b).

⁸⁰ *FV* 32, 33, 274.

⁸¹ *FV* 33, 34. They date to 315 and 313 respectively. For the general context of the sale of children, see Boswell (1988: 69-73) and Evans-Grubbs (1993a: 133-6).

⁸² See Nardi (1984: 2287-308). Note the similar case of *CTh* 4. 12. 1, discussed below.

Four constitutions from the *Codex Iustinianus* give Constantine and Licinius as the issuing emperors as follows:

- CJ* 3. 1. 8. *Imp. Constantinus et Licinius AA. ad Dionysium.*
15 May 314.
- CJ* 6. 1. 3. *Imp. Constantinus et Licinius AA. ad Probum. Sine*
*die et consule.*⁸³
- CJ* 7. 16. 41. *Imp. Constantinus et Licinius AA. ad Titianum*
*praesidem Cappadociae.*⁸⁴
- CJ* 7. 22. 3. *Exemplum sacrarum litterarum Constantini et Licinii*
AA. ad Dionysium vice praefectorum agentem. 29
April 314.⁸⁵

As already discussed in Chapter 2, these constitutions probably originate from the third edition of the Hermogenian Code, revised before the fall of Licinius in 324. The letter addressed to Titianus, *praeses* of Cappadocia, must be a true constitution of Licinius, since it concerns his part of the empire. If the other texts derive from the same source, we may suppose that they too genuinely belong to Licinius.⁸⁶ It looks, therefore, as if Hermogenian's final edition was produced in Licinius' territory.

⁸³ This heading is also preserved as *Imp. Constantinus et Licinius C.*

⁸⁴ This undated constitution lacks any subscript. A papyrus fragment of *CJ*, which includes this text, preserves only indecipherable traces where the subscript should be, which in any case might have been only the formula *sine die et consule* (*PSI* XIII 1347 = Amelotti and Migliardi Zingale 1985: 29). This text is a rescript to the governor on a specific case. Identification with the Titianus of *CTh* 8. 5. 2 (see below) would suggest a date of 316. Barnes (*NE* 154 n. 40) suggests it could also be 310–12, presumably therefore a law of Galerius or Maximinus. However, the two texts of Constantine and Licinius to Dionysius (*CJ* 3. 1. 8, 7. 22. 3) are dated to Apr. and May 314, after the fall of Maximinus, so that 316 is probably not far wrong.

⁸⁵ Archi (1988: 99–100) follows Silli (1980) in attributing to Constantine the letters to Dionysius, on the grounds that a stress upon *aequitas* (mentioned in both texts) is a distinguishing feature of Constantine's legislation.

⁸⁶ Addressing the urban prefect in 365 (*CJ* 7. 39. 2), Valentinian I refers back to a *lex Constantiniana*, sometimes identified as *CJ* 7. 22. 3. However, even if he does mean this law, it may well have been in a version with the name of Licinius removed; or if not, Licinius may not have been perceived as the true author of the text. It is hardly surprising that later emperors would automatically assume that what were in fact surviving Licinian laws were instead Constantinian. Indeed, since the law referred to may instead be *FIRA*² i no. 96 (thus Kraemer and Lewis 1937: 357–8), which carries the names of Constantine and two Caesars, the phrase *lex Constantiniana* still only refers to Constantine himself, ignoring the other co-issuers. However, I have already suggested that the law referred to by Valentinian is a Constantinian law that has not survived (Ch. 3 Sect. iii).

(c) *The Theodosian Code*

In the Theodosian Code there are no headings that include Licinius. Few, indeed, acknowledge the existence of Constantine's sons as Caesars.⁸⁷ The constitutions from 313 to 337 appear to emanate from Constantine alone.

The search for Licinian texts can start from a simple criterion of geography. *A priori*, any constitution that has a place of issue in its subscript that is in Licinius' territory must be seen as his enactment, and any law with a destination in the east must be similarly regarded. Most such texts, however, have had their transmitted manuscript date or place emended by various scholars (mainly Seeck), usually for entirely valid reasons.⁸⁸ This still leaves a small number of constitutions worthy of consideration.

1. *CTh* 10. 14. 1. Constantine to Mygdonius, *castrensis palatii*. 21 March 315, Antioch (Corcoran 1993: 108–10).

The presence of Licinius in Antioch is not incompatible with what little we know of his movements between 314 and 316.⁸⁹ After the fall of Maximinus, he visited Antioch, where he gained unpopularity by not distributing largesse.⁹⁰ He may have campaigned on the Persian front in 314. So, he could still have been in Antioch in spring 315, although there has to be allowance for some Danube campaigning.

The recipient is also quite plausible. The late Roman imperial court was characterized by the presence of eunuchs as *cubicularii*, though quite how far this had been established by Diocletian is unclear.⁹¹ Eunuchs are already described as powerful at his court,⁹² though

⁸⁷ The heading *Constantinus A et C* occurs at *CTh* 2. 22. 1, 3. 17. 1, 3. 17. 2, 7. 1. 1, 7. 12. 1, 9. 16. 3, 10. 1. 1, and 11. 39. 2. A Caesar is actually named at *CJ* 5. 1. 2 (*Constantius*) and 5. 34. 11 (*Constanti(n)us*). In addition to the Vatican Fragments already cited, the Caesars also occur at *FV* 249, 273, and 287. Crispus is nowhere named as an issuing Caesar in our surviving legal sources, though some laws in the 5th cent. still bore his name, as seems to be implied by Sozomen, *HE* 1. 5. 2. Crispus does get one mention in *CTh*, other than from consular dating, in an amnesty granted for the birth of his child (*CTh* 9. 38. 1, 322). Barnes (*NE* 84–5) assigns three *CTh* laws of Constantinian date to Crispus or Constantine II.

⁸⁸ For the list of these texts, see Corcoran (1993: 107–8 n. 59).

⁸⁹ See Barnes, *NE* 81–2.

⁹⁰ See Downey (1961: 335). This is based on Malalas 12. 314, whose account of the tetrarchic emperors is extremely garbled.

⁹¹ See the cautious comments of Ensslin (1939: 388). Hopkins (1978: 192–3) wonders whether the catalyst for a proliferation of eunuchs at court was the capture of the Persian king's harem in 298.

⁹² Lact. *DMP* 15. 2, probably to be identified with Dorotheus 2 (*PLRE* i. 270) and Gorgonius 1 (*PLRE* i. 398).

specific titles such as *praepositus sacri cubiculi* and the more junior *castrensis* are not yet attested.

There is, therefore, nothing exceptional about the circumstances of this law to demand emendation. Seeck, however, chose to identify Mygdonius with the recipient of two letters of Libanius in 357.⁹³ This man was powerful and influential and had taken Libanius under his protection both in Athens and at Constantinople in the 340s. He survived to be able to deliver letters to Julian in 362. The texts that mention him do not indicate what posts he held. He does not sound like a eunuch palace official of Constantius II, of the type so disliked by Ammianus.⁹⁴ However, there is no positive evidence that at this period the *castrensis* was a eunuch.⁹⁵

Identifying the two Mygdonii, Seeck proposed to emend the date 315 (Constantine and Licinius both *cos. IV*) to 346 (Constantius IV and Constans III). Confusion between imperial consular dates is the most likely source of incorrect subscripts and this choice fits in with Constantius' itinerary.⁹⁶ Seeck had an additional, though unstated, assumption underlying his emendation. He believed that the first civil war between Constantine and Licinius took place in the autumn of 314;⁹⁷ thus Licinius would hardly have retired so far from his rival so soon after his defeat, even though he could have reached Antioch by 25 March 315. But as the civil war occurred in 316–17, the date and place are compatible with Licinius' movements.⁹⁸ The need for emendation therefore disappears. The identification of the two Mygdonii, though still plausible, is not imperative.

The case for Constantius and 346 is strengthened, however, if the almost identical law at *CTh* 10. 14. 2 (348) is seen as an imitative measure by Constans for the west.⁹⁹ It remains none the less possible

⁹³ Seeck (1906: 219; *RG* 38, 194). For full ancient references, see *PLRE* i. 614.

⁹⁴ For Ammianus on eunuchs, see J. F. Matthews (1989: 274–7). For Libanius' own view, see *Or.* 62. 9. Hostility to eunuchs is attributed to Licinius himself at *Epitome de Caesaribus* 41. 10.

⁹⁵ Costa (1972: 358–87). He argues that no 4th-cent. *castrensis* can be shown to be a eunuch and that they were not initially *cubicularii*, but rather superior to the *praepositus*.

⁹⁶ It is thus used in the reconstruction of Constantius' movements by Barnes (1993: 220).

⁹⁷ Seeck, *RG* 163.

⁹⁸ The date 316/17 was firmly established by Barnes (1973a. 36–8), following earlier work of Bruun (1953; 1961) and Habicht (1958).

⁹⁹ Voci (1978: 25). Note that Constans refers to *pater noster* (Constantine), while the text under discussion does not—if it did, attribution to Constantius II would be certain, as Licinius did not have an imperial father (apart from the fictitious descent from the Philips alluded to at *SHA, Gord.* 34. 5).

that the subscript date could be left unaltered, allowing the attribution to Licinius.

2. *CTh* 8. 4. 3, 10. 7. 1, 10. 20. 1, 12. 1. 5 (edict no. 43). Constantine *ad Bithynos*. 21 July 317 (Nicomedia?) (Corcoran 1993: 110–11).

These four passages regulating the possession of equestrian ranks constitute part of an edict issued to the Bithynians. Given that Licinius' main residence from 317 was Nicomedia, it is even possible that this law implies his presence there at this time.¹⁰⁰

It is surprising, in view of the tendency to emend away Licinian laws, that the consular date Gallicanus and Bassus (317) has not yielded to Gallicanus and Symmachus (330), thus making it an edict of Constantine.¹⁰¹ Alternatively, did Licinius here merely follow a constitution of Constantine from January 317, that precedes one of the extracts from this edict?¹⁰² After the death of Galerius, Maximinus had claimed the title of senior emperor, but this was voted to Constantine by the senate after the defeat of Maxentius in 312.¹⁰³ Licinius was therefore constitutionally subordinate, as Eusebius stressed by portraying him as an ungrateful junior. Just as Maximinus at least pretended compliance with the authority of Constantine over the Christians in 312, so it is supposed, Licinius repeated his senior's legislation in this matter. It has even been thought that he could not issue his own edicts.¹⁰⁴

This argument does not hold in this case. Although both constitutions concern the status of decurions, their juxtaposition in the code is misleading. In fact, they approach the question from different angles. Constantine is concerned to safeguard the due status of decurions and prevent usurpation of their privileges. Licinius is only mentioning decurions among a number of other groups whose entitlement to the perfectissimate and other ranks needs to be strictly regulated. If this is an edict of Licinius, there is no need to deny him the initiative for issuing it. Indeed, as already shown, even the Caesars in the tetrarchic system had some legislative competence.

Moreover, the ability of a senior emperor to enforce his legislative

¹⁰⁰ For Licinius at Nicomedia, see Barnes, *NE* 80. Millar (1983: 93) suggests that the law was prompted by a provincial embassy worried by the easy availability at the nearby imperial capital of ranks carrying curial exemptions.

¹⁰¹ This idea is noted in passing by Seeck (1889: 219).

¹⁰² *CTh* 12. 1. 4. See Seeck, *RG* 54, 165.

¹⁰³ Lact. *DMP* 44. 11.

¹⁰⁴ Habicht (1958: 369–70) suggests that Licinius lost the power to legislate (other than repeating Constantine's western laws in the east) after his defeat in the civil war of 316/17.

will was severely limited. Even Diocletian could not force Constantius to implement the Great Persecution with eagerness.¹⁰⁵ With the breakdown of the settlement after the abdication in 305, the rulers probably went their separate ways, whatever the constitutional theory. Maximinus and Licinius split Galerius' dominions in 311, almost going to war and then concluding a peace treaty with one another.¹⁰⁶ Only in 313 did Licinius enter Constantine's territory, invited in peace to confer at Milan, and he was not pleased when Constantine violated his territory in 323. Of course, this does not preclude the possibility that Licinius might voluntarily imitate Constantine's legislation, although the similar problems facing any emperor make similar legislation inevitable.¹⁰⁷

3. *CTh* 1. 27. 1. Constantine (recipient lacking). 23 June 318, Constantinople (Corcoran 1993: 111–13).

This law granting jurisdiction to Christian bishops lacks any recipient in its heading and has a corrupt subscript, which appears to state that it was given at Constantinople in June 318. It has been suggested that Licinius issued this law from Byzantium, soon to be Constantinople.¹⁰⁸ Could this pagan have legislated so favourably for Christians?¹⁰⁹

Licinius conquered the east as a liberator from tyranny and persecution, bringing toleration to Christians. The 'edict of Milan' granted full toleration and restitution to the church. It is an even-handed pronouncement, specifying religious tolerance not just for Christians but for all—that it is not more favourable to Christians may represent the less enthusiastic attitude of Licinius, as opposed to that of Constantine, who was already extending immunities to clerics in Africa.¹¹⁰ But it is pos-

¹⁰⁵ Lact. *DMP* 15. 7 says that he complied only as far as pulling down churches. Eus. *HE* 8. 13. 13 and *VC* 1. 13. 2 tries to deny that he did even that much.

¹⁰⁶ Lact. *DMP* 36. 1–2. For a more favourable view of Maximinus as trying to uphold the tetrarchic system, see Decker (1968: 544–6) and Bruun (1988).

¹⁰⁷ For some unconvincing attempts to explain problems of dating in inscriptions and subscriptions of laws, by presuming legislative correspondence between Licinius and Constantine, see Castello (1976) and Sargenti (1983).

¹⁰⁸ Millar (1977: 591 n. 7). Barnes (*CE* 312 n. 80) suggests that if this is Licinius, he is repeating an enactment of Constantine.

¹⁰⁹ Cf. *CJ* 1. 13. 1, addressed to Protogenes (bishop of Serdica) on manumission in church. Its transmitted date is June 316 which implies issue by Licinius (at Serdica?), but it is usually regarded as one of Constantine's three church manumission laws (Barnes, *CE* 50–1). Seeck (*RG* 173) placed it in June 323 and Barnes (*NE* 73) in Dec. 316. On the date, see further App. D.

¹¹⁰ See letter catalogue, nos. 63, 71, 72. Keresztes (1983: 391) sees Licinius as a positive influence leading to the promulgation of Galerius' toleration edict, while Corsaro (1983) suggests that he was a moderating influence on Constantine over the 'edict of Milan'.

sible that Licinius extended immunity to clerics in imitation. This is inferred because the forcible appointment of clerics to town councils was one of the marks of his later persecution, implying the abolition of previous immunity.¹¹¹

Licinius' wife, Constantine's sister, Constantia, was a Christian¹¹² and close to Eusebius bishop of Nicomedia, who had chosen the episcopal see where the power was, namely in a principle imperial residence.¹¹³ There were thus powerful Christian voices close to the emperor.¹¹⁴ Could Licinius have listened to them? If Jews enjoyed certain rights of separate jurisdiction,¹¹⁵ why not Christians? This was some time before tension between the two Augusti led Licinius to take action against the Christians at some point after 321. The Council of Nicaea in 325 called Licinius' rule a tyranny,¹¹⁶ and after its conclusion, Eusebius of Nicomedia was accused of abetting the tyrant.¹¹⁷ Could the persecution of Licinius, localized and uneven as it was,¹¹⁸ have selected its targets carefully? Perhaps the ban on synods of bishops was designed to hinder the meetings of Eusebius' opponents in the developing Arian controversy.¹¹⁹

Interesting though this scenario is, there are too many arguments against it. If Licinius had really helped the Arians, the ammunition would have been too good for Athanasius and other anti-Arian writers to ignore. In any case, the law is in keeping with Constantine's attitude. It is most likely this passage that he refers to in a letter addressed to the praetorian prefect Ablabius in 333, where he refers to such a law as already in existence and criticizes Ablabius for not knowing of his original disposition.¹²⁰

¹¹¹ Eus. VC 2. 20. 2, 2. 30. 1. Note that even Constantine had to forbid those of curial rank from becoming clerics in order to avoid *munera* (CTh 16. 2. 3, 16. 2. 6).

¹¹² On the Christianity of Constantia, see Gero (1981: 463-4) and Pohlsander (1993: 156-8, 162-3).

¹¹³ Barnes, CE 70. Eusebius of Nicomedia was related to Julius Julianus, Licinius' praetorian prefect.

¹¹⁴ For an influential pagan at the court of Licinius, note Hermogenes (see Ch. 6 Sect. ii). Other pagans at court included an unidentified correspondent of Iamblichus, who apparently delivered orations before Licinius (Barnes 1978).

¹¹⁵ For discussion of a near contemporary rescript (CJ 3. 13. 3, 293), which appears to deal with Jewish jurisdiction, see Linder (1987: 114-17).

¹¹⁶ *Concilium Nicaenum*, canon 11 (ed. Mansi, ii. 673-4).

¹¹⁷ In a letter to the church at Nicomedia, Constantine accused Eusebius of helping Licinius both in the persecution and the civil war (Gelasius, HE 1. 11. 22-3 = 3 App. 1. 9-10 and Theodoret, HE 1. 20. 1-2).

¹¹⁸ Eus. VC 1. 51, 2. 66. See Judge (1983: 27), Barnes, CE 376 n. 154, id. (1993: 16). The ban may be quite late, shortly before the final civil war. See R. Williams (1987: 49-50, 268 n. 12).

¹¹⁹ Sirm. 1 (333).

This law, therefore, need not be attributed to Licinius. The subscript of the constitution has been sufficiently explained by Seeck, who demonstrates how the consular date for 318 became corrupted to give Constantinople.¹²¹ Any subscript mentioning Constantinople before the date of its founding is suspect. Two laws of 323 from the code also mention Constantinople and Seeck took these to refer to Constantine in Byzantium, at the time when he had to violate Licinius' territory in the emergency of a barbarian incursion,¹²² although it might equally well mean Licinius in Byzantium.¹²³ However, I think it more likely that Constantine's name was transposed into the consular date, even though this was a year when Constantine as consul was not in the subscript, and that the name was then corrupted to Constantinople. The only emperor found issuing laws at Byzantium in this period is Diocletian in the 290s.¹²⁴

4. *CTh* 8. 1. 1. Constantine to Leontius. 9 June 319, posted at Hierapolis (Corcoran 1993: 113).

If this subscript is correct, this would have to be a law of Licinius, although as it was only posted, not issued, at Hierapolis, it does not provide evidence of Licinius' movements in a year for which there is no specific attestation.¹²⁵ Seeck, however, proposed that the recipient, Leontius, whose office is not given, should be identified with Constantius II's praetorian prefect of the east and the text redated to 343.¹²⁶ Constantius is otherwise attested issuing a law to Leontius at Hierapolis in June 343 and was still in the city in July.¹²⁷ Against this, Jones argued that the use of the term *tabularii*, to denote financial officials of provincial governors, supports the manuscript date. Examination of the other laws under the same Theodosian title shows that the term *numerarii* was employed in 334 (8. 1. 4), but that the emperors ordered the term *tabularii* to be used again from 365 (8. 1. 9).¹²⁸ However, this presses too far an imperfectly understood terminology. The coincidence of Leontius and Hierapolis is far more convincing in supporting an attribution to Constantius II.

¹²¹ Seeck, *RG* 57. For various possible confusions connected with the presence of Constantinople in subscripts, see Krüger (1921: 64).

¹²² *CTh* 11. 30. 12, 12. 1. 8. Seeck, *RG* 110–11, 172.

¹²³ Barnes (*NE* 82) is tentative on this point. ¹²⁴ *Ibid.* 50–4.

¹²⁵ See Barnes, *NE* 80–2. Licinius' main residence at this time was Nicomedia.

¹²⁶ Seeck, *RG* 192.

¹²⁷ *CTh* 12. 1. 35, 15. 8. 1. All these texts are used in the reconstruction of Constantius' movements by Barnes (1993: 220)

¹²⁸ A. H. M. Jones (1948: 47 nn. 98–9), accepted by *PLRE* i. 499 (Leontius 3).

5. *CTh* 2. 30. 1 (edict no. 38). Constantine *ad universos provinciales*. 2 June 315, Sirmium (Corcoran 1993: 113–14).

It is more difficult to identify the issuer of this edict. Here the choice is between keeping Sirmium and assigning the law to Licinius, or changing it to Sirmio (near Verona) to suit Constantine's movements, as is done in the case of another constitution.¹²⁹ The law seeks to prevent goods being seized as pledges for debt in civil cases, this being seen as detrimental to the collection of taxation for the fisc. It would press the content of this law too far to see this concern as a mark of the rapaciousness of Licinius, rather than as a typical imperial worry about the unhindered collection of taxes. It is as likely to be an edict of Constantine as one of Licinius.

6. *CTh* 11. 16. 3 (edict no. 55). Constantine *ad edictum Calchedoniensium et Macedoniensium*. 24 April 324 (Corcoran 1993: 114).

The last puzzle of geography is this text of April 324, the wording of whose inscription is mysterious, apparently mixing territories of Constantine and Licinius. There seems to be no ready explanation for the form or content of this heading.¹³⁰ Emendation of the date seems the least problematical solution of the geographical conundrum.¹³¹

This completes the list of the more likely Licinian laws in the code based on the premises of geography. They can all be challenged with a degree of plausibility.

Some other possibilities remain. Titianus, governor of Cappadocia, the recipient of *CJ* 7. 16. 41 from Licinius, discussed above, may be the same as the recipient of a letter on the abuse of the beasts of the *cursus publicus*.¹³²

Less certainly, the Probus of *CJ* 6. 1. 3 has been identified with the recipient of *CTh* 4. 12. 1, and both these with the praetorian prefect of Licinius, consul in 310.¹³³ But there is more to this argument than thus

¹²⁹ *CTh* 7. 22. 1. Both options are mentioned by Barnes, *NE* 72 n. 113. Bruun (1961: 33) prefers to change the year to 319. Grünwald (1990: 111) suggests that Constantine was at Sirmium in Licinius' territory, because the emperors were conducting a joint Danube campaign.

¹³⁰ For discussion of possible explanations for headings *ad edictum*, see Gaudemet (1979: 32–3).

¹³¹ Seeck (*RG* 174) proposes the year 325.

¹³² *CTh* 8. 5. 2. Thus identified by Seeck (*RG* 164), but *PLRE* i. 917 (Titianus 1 and 2) is more cautious.

¹³³ For the identification, see Seeck (*RG* 53, 162) and Amelotti (1961: 308–11). For Probus, see Barnes, *NE* 127, who is against identifying him as recipient of the second letter and suggests that the *CJ* text dates from 310/11.

identifying an otherwise unknown recipient. The Theodosian title under which this text comes is concerned with the *Senatus Consultum Claudianum* and the question of women who cohabit with slaves. The code did not set out to provide a consistent body of constitutions, and under this title there are reversals of attitude towards the *senatus consultum*. Three of these laws plus the *interpretatio* of a fourth are attributed to Constantine, from the years 314, 317, 320, and 331, giving respectively a severe, then a lenient, another lenient, and finally a severe approach.¹³⁴ The solution of this imperial changeableness is seen to be to attribute the first law to Licinius, thus allowing Constantine to undergo only a single change of mind.¹³⁵ Coincidence also lends plausibility to this idea, in that three of the four Licinian texts in the *Codex Justinianus* are concerned in various ways with slavery. The one to Probus, for instance, decrees amputation and other penalties for those slaves trying to flee to the barbarians. Thus severity in such matters is seen as a mark of Licinius' attitude. Cruelty, however, is a consistent trait in late Roman legislation, and there are plenty of harsh punishments in Constantine's own laws.¹³⁶ There also seems no particular need to eliminate imperial changes of mind, and such inconsistencies may in any case reflect changes in the advice offered by the *magistri epistularum* or other officials concerned with composing pronouncements. It does, however, seem to be a dangerous precedent to set, that Licinius should become a dumping-ground for problematical Constantinian legislation.

Epigraphy provides us with a further salutary warning. A letter of 314 is addressed to Maximus, urban prefect at Rome, whose period of office (319–23) does not coincide with the subscript date, making emendation of the date the likeliest solution of the inconsistency.¹³⁷ But this text is also known as part of a larger edict inscribed on stone, the *Edictum de Accusationibus*. All five surviving copies of the edict come from Licinius' dominions (Lyttus, Tlos, Padua (but probably from Asia), Sinope, and Pergamum),¹³⁸ and the Lyttus copy is headed with the words *exemplum sacri edicti*. At the very least then, what appears in the code as an undoubted letter of Constantine went out as an edict

¹³⁴ *CTh* 4. 12. 1–4.

¹³⁵ Andreotti (1962: 45–7). Thus, Constantine comes to adopt the stance of Licinius on this matter. For a good recent account of the development of Constantinian legislation on this topic, see Evans-Grubbs (1993b: 140–50).

¹³⁶ See MacMullen (1986: 157–8); note also Millar (1984) and Liebs (1985b).

¹³⁷ *CTh* 9. 5. 1. Thus Seeck, *RG* 75, 169.

¹³⁸ For full references, see edict catalogue, no. 35.

in Licinius' territory. Sentiments of hostility to informers are found in other Constantinian texts, shortly after the fall of Maxentius, the mark of an appropriate desire to limit the dislocation of a change of ruler, and to suppress what every ruler professed to loathe.¹³⁹ Likewise, the edict issued early in 314 would be appropriate action by Licinius following the death of Maximinus in the summer of 313. It should be noted, however, that Licinius himself went further than Constantine by conducting an extensive purge of Maximinus' supporters, including the elimination of seven left-over wives and children of former emperors.¹⁴⁰ The fate of these lofty unfortunates aside, imperial providence on behalf of the provincials was not geographically limited, since the edict was published even in Crete, which had not been under the rule of Maximinus. The initiative of Licinius in this matter is made more likely by the presence of crucifixion in the text as one mode of punishment for slave informers. Constantine abolished crucifixion out of respect for its Christian associations, though it is not clear when he did so.¹⁴¹

The law appears to exist as a letter in the code and an edict on stone. The end of the edict talks of *scripta* with more details being sent to the praetorian prefects (theoretically of both emperors), governors, and the *rationalis* and *magister privatae* (presumably just of Licinius).¹⁴² These *scripta* might be what we find in the code. With a small emendation to the heading, the recipient could become the praetorian prefect of Licinius (i.e. *pu* changed to *pp*).¹⁴³ The wording in the code is so close, that it would seem odd, if it represents the emperor sending what is an identical text, masquerading as an amplification. However, the code extract is very short. We may possess only the overlap between two different but complementary parts of the same administrative act. What this law

¹³⁹ *CTh* 10. 10. 1-2 (312/13). See edicts nos. 31-2 and Gaudemet (1980).

¹⁴⁰ Lact. *DMP* 50. 2-51. 2. The victims were Candianus (son of Galerius), Severianus (son of Severus), the wife and two children of Maximinus (all killed during summer and autumn 313), and Valeria and Prisca (daughter and wife of Diocletian), who were not executed till the summer of 314. For the execution of Maximinus' partisans, see Eus. *HE* 9. 11. 3-7. For a similar contrast of purge and restraint, note that after the defeat of Magnentius in 353, Constantius II granted an amnesty (*CTh* 9. 38. 2), but also hounded suspected supporters of the usurper (Ammianus 14. 5).

¹⁴¹ Aurelius Victor, *Caes.* 41. 4-5, who uses the same terminology as the law (*patibulum*) and also describes Licinius as executing philosophers *servili more*; Sozomen, *HE* 1. 8. 13.

¹⁴² An acephalous edict from Crete (*Inscr. Cret.* 1. 18. 189) ends in much the same way, with instructions for copies of letters to the same selection of officials to be published. Comparison with the edict *de accusationibus* suggests it might indeed be an enactment of Licinius. See edict catalogue, no. 36.

¹⁴³ This is proposed by Barnes (1976c 275-7; also *NE* 127-8).

does demonstrate is that when the emperor performs a single act of legislation, multiple copies of several different texts are involved.¹⁴⁴

Whatever the exact relationship between the letter in the code and the epigraphic text, it looks as if Licinius may have survived in the code, hidden perhaps through the very acts of *damnatio* meant to erase him. A difficulty arises, however, with the Padua copy of the edict, which concludes with part of a letter restraining the audacity of the Caesarians in *urbs Romana*, presumably Rome.¹⁴⁵ Since the Padua stone originated from Asia, it is not clear why this text referring to Rome (and which should, therefore, have emanated from Constantine) was considered a relevant addition to the inscription. This problem has led some scholars to keep Seeck's attribution of the law to Constantine in 320, and indeed to identify the Padua version as the letter to the urban prefect evidenced in the codes.

For instance, a recent discussion rejects on three grounds Barnes's attribution of the text to Licinius and identification of Maximus as praetorian prefect.¹⁴⁶ First, that the eastern provenance of the Padua copy cannot be verified. Second, that the plural *praefecti* mentioned towards the end of the edict should be the praetorian prefect of Constantine and the urban prefect. Finally, that there are no Theodosian Code letters to praetorian prefects as early as 314. In answer to these points, it should be noted that there *are* earlier letters to praetorian prefects preserved outside the Theodosian Code.¹⁴⁷ Secondly, the coupling of the urban and praetorian prefects appears very odd, especially as it was usual for the praetorian prefects to be considered as a college, after the manner of the emperors whom they served, even though only a single one was normally present with each emperor. Only the question of the Padua copy's provenance is lacking in positive proof, although editors are unequivocal in regarding its origin as Asia.¹⁴⁸

The alternative attribution of the full edict to Constantine raises difficulties over the spread of inscriptional finds. If promulgated in Rome (and Crete?) in January 320, the law must have been reissued in identical form five years later for inscription in the eastern territories taken from Licinius. Given that Constantine issued other sizeable

¹⁴⁴ This matter has already been discussed in Ch. 7 Sect. iii.

¹⁴⁵ *CIL* 5. 2781, lines 31–4. This is printed as a separate constitution in Bruns⁷ no. 95, but ignored by *FIRA*² i no. 94, which follows the Cretan copy.

¹⁴⁶ Delmaire (1989a: 29 n. 7).

¹⁴⁷ The first tetrarchy *ad praefectos* (*CJ* 10. 42, 10) and the letter of Maximinus to Sabinus in 312 (letter catalogue, no. 57).

¹⁴⁸ Thus in *CIL*, *FIRA*² i, and Bruns⁷.

pronouncements in the aftermath of his victory, it seems unlikely that he would have merely dusted down an existing text or that local initiative would have produced the desire to copy already valid law so widely.¹⁴⁹ Licinian provenance still seems preferable.

One last possible rescript of Licinius remains to be considered. In 336, a son of Licinianus was reduced to slavery and condemned to the *gynaecia* at Carthage.¹⁵⁰ His legitimacy derived from a *rescriptum sanc[tissi]mum*. This person used to be identified as Licinius Junior,¹⁵¹ now more recently as an unknown illegitimate son of Licinius.¹⁵² However, it seems most unlikely that this 'holy rescript' would be a phrase applied to a legitimizing act of Licinius for his bastard son. But it also seems unlikely that Constantine would have legitimized his deceased rival's son, unless, perhaps, Constantia desired to adopt the child, as Valeria had adopted Galerius' natural son Candidianus.¹⁵³ The easiest solution is to suppose that the son of Licinianus is no relation of Licinius at all.¹⁵⁴

(d) Conclusion

Some acts of Licinius survived via the Hermogenian Code, precisely because they were collected before his fall, and were not subsequently emended to eliminate his name. Why then should any be found at all in the Theodosian Code, which itself contains laws annulling his constitutions?

I do not believe that Constantine's sweeping pronouncement of abolition cited above signifies a policy of search and destroy.¹⁵⁵ Such a short extract from what may have been a longer law lacks the full context. It may have originated from a specific problem. In any case, implementation would probably be difficult, lacking in both efficiency and thoroughness, just as Licinius' name was not comprehensively

¹⁴⁹ Although a law may sometimes be copied by another ruler in similar language (as in *CTh* 10. 14. 1-2 mentioned above), legislative reiteration normally consists of a new text containing references back to the earlier one. On reiteration in general, see Gaudemet (1972).

¹⁵⁰ *CTh* 4. 6. 2-3.
¹⁵¹ Thus Pauly-Wissowa, *Real-Encyclopädie*, xiii (1927), 231. Inscriptional evidence shows that Licinius Junior was beyond doubt the son of Licinius and Constantia. See *PLRE* i. 510, Christol and Drew-Bear (1986: 43-51), and Chastagnol (1992: 317-23). On the death of Licinius Junior, poss. in 326, see *ibid.* 321 and Pohlshander (1993: 159-60).

¹⁵² *PLRE* i. 510 and Barnes, *NE* 44.

¹⁵³ Lact. *DMP* 50. 2.

¹⁵⁴ This conclusion is also reached by Chastagnol (1992: 322-3).

¹⁵⁵ *CTh* 15. 14. 1.

erased from all inscriptions.¹⁵⁶ Where laws were headed with the names of both emperors, it might soon be unclear who really did issue them, especially since the simple removal of Licinius' name could hide forever his connection with the law.

As discussed above, any startling and unpopular innovations would be likely to be known and abolished easily. If Licinius' enactments were brought forward in support of a petition or were cited in court, or if there were appeals against them, all these would bring them to notice and expose them to invalidation. Several tyrant texts already noted are quite specific in this manner, those relating to the freeborn enslaved, the *cohortales* deprived of privileges, and senators forcibly made *navicularii*.¹⁵⁷

Failing this, the constitutions of tyrants could survive quietly and then unwittingly be included in collections of laws, even if on no great scale. After all, the Theodosian Code also includes one eastern law to be ascribed to Maximinus, a letter to the governor of Lycia and Pamphylia on the immunity of urban populations from the poll-tax.¹⁵⁸ This must have survived whatever *damnatio memoriae* Licinius decreed for him.¹⁵⁹ Likewise, Licinius has at least minimally survived in the later codes, but in a manner that sounds a note of caution. Most enactments that might be attributed to him on reasonable grounds are vulnerable to challenge, but the edict *de accusationibus* that would not have been attributed to him from the code texts alone can plausibly be assigned to him by independent epigraphic evidence.

¹⁵⁶ Andreotti (1959: 1027–30) lists all inscriptions of Licinius then known, followed by a much shorter list of those with his name erased.

¹⁵⁷ *CTh* 5. 8. 1, 8. 4. 1, 15. 14. 4.

¹⁵⁸ *CTh* 13. 10. 2 = *CJ* 11. 49. 1 (letter no. 56, June 312?). The date and place of *CTh* 10. 4. 1 (Mar. 313 at Heraclea) suggest Maximinus, but the recipient (the vicar of Rome) demands that the date be emended (Seeck, *RG* 176 places it in 326). For surviving constitutions of Magnus Maximus, see *CTh* 9. 36. 1 (385 at Trier) and 6. 28. 4 (387 Milan). Cf. *Coll. Avell.* 39, 40; the former calls Maximus *tyrannus*, the latter gives his full titles. Note also *CJ* 5. 5. 8 (475, Basiliscus) and *Coll. Avell.* 56 (Pope Simplicius to Zeno/Basiliscus).

¹⁵⁹ For the *damnatio memoriae*, see Eus. *HE* 9. 11. 2.

Conclusion

The tetrarchic period displays a richness and variety in the pronouncements of its emperors, which the preceding chapters have attempted to explore, assembling together this wide range of material. What conclusions can be drawn about the nature of tetrarchic government, and its ideology and ambition?

First, the private rescripts themselves, despite their predominance in the material, were not strictly speaking fulfilling a legislative function nor were they for the most part intended to be innovative (Chapter 3 Section iii). Rather they are a good illustration of how the emperor responded to requests from below. The tetrarchic emperors remained highly approachable and the system served even those of traditional low status in the ancient world, such as women and slaves (Chapter 5). This is also shown by a few examples of direct interaction between emperor and subjects in face-to-face encounters (Chapter 10).

The publication of the Gregorian and Hermogenian Codes represents something new in imperial policy. But this should not be seen as signalling a dramatic change from an emperor who simply reacts to petitions to an emperor who imposes set answers in advance from above. As shown in Chapter 2, the motivations for and consequences of the codes are difficult to reconstruct. What is certain is that the sudden decline in the number of rescripts in the material is a function of the evidence. Both the supposed 'importance' of third-century rescripts and the 'insignificance' of fourth-century rescripts arise principally from the fact that there was only ever one major period of rescript collection, namely in the 290s at the court of Diocletian. Further, the idea that the promulgation of the codes automatically eliminated much of the demand for rescripts, by providing ready-made solutions, is open to question. I do not think that the rate of provision of legal answers can be assessed on a criterion of reducing balance, whereby a given volume of legal problems in society is progressively solved, leaving an ever-decreasing proportion to be tackled by future legislation. Indeed, some might argue that as problems are tackled by legislation, more problems

are created (perhaps from that very legislation) to replace them. Further, many legal points need constant reiteration, no matter how often they have been stated before. Fourth-century rescripts survive from as late as the 360s and are mentioned in *CTh* even later than that. It is likely therefore that rescripts continued to be more important than is often assumed.¹

The publication of the codes must have disseminated knowledge of a large number of imperial texts more widely than ever before. The personal and private nature of rescripts meant that, previously, the most authoritative or innovative interpretation of the law might remain unused even for the case for which it was issued. Much was now rescued from past obscurity, while the recent constitutions of Diocletian and his jurists, if prompted still by traditional petitions from below, gained what was, in effect, a general promulgation. Rescripts thus enjoyed greater currency and higher status than at any other time. To Hermogenian, the theorist, the codification gave the opportunity to reduce the law to logical order based on sound legal principles, and to produce a work that would spread this knowledge under imperial auspices. His expertise and that of his colleagues was now easily available for the guidance of governors or lawyers, or anyone else who might wish to use it.

Governors continued to correspond with the emperor on particular cases. The rescripts addressed to them can be easily seen in the Diocletianic material, but can also be found among the letters of Constantine, even though they are more difficult to detect (Chapter 6 Section iv). Indeed, they are likely to be underrepresented in *CTh*, as a result of the process of selection and editing, which may have omitted rescripts or concealed their nature. Further, the existence of legislation on a particular topic still meant that an official, even a praetorian prefect, might not know about it or might ignore it. Thus there was a constant process of consultation by officials and repetition of enactments. Finally, the expression of an imperial desire not to be troubled is sign enough that a mass of correspondence still clamoured for the emperor's attention.²

However, although rescripts are present among the letters, there is an increasing tendency for unsolicited missives to be sent to officials and others. This is revealed in particular by the manner in which the

¹ Theodosius II, of course, showed no desire for them to be included in his code, itself a reason why so few 4th-cent. examples survive. Their authority as precedents had been largely undermined by a law of Arcadius, which restricted the validity of rescripts issued in response to *consultationes* (*CTh* 1. 2. 11, 398).

² See Ch. 6 n. 224 above.

distinction between letters and edicts is eroded, as differences in format become less and each may be circulated with near-identical texts to promulgate a single act of general legislation (Chapter 7 Section iv). Thus, whether there was any decrease in the number of letters and petitions reaching the emperors, there was certainly an increase in the number of documents emanating from the imperial chancery sent to officials. Governors could now undertake the task of administration and justice in their smaller provinces with the codes clutched in one hand and a sheaf of imperial letters, both solicited and unsolicited, in the other.

What is also demonstrated in the evidence is that it was with the governors and even lower provincial and city officials that there resided the real power to further or thwart imperial designs. For the emperor, the issue of a reply to a petition was often the end of the matter and problems of enforcement were not envisaged. Some petitioners were intrepid enough to approach the emperor a second time, but most had to be content with the way the governor did or did not act on their behalf, even with a copy of the rescript before him (Chapter 9 Section i).

Further, the persecution decrees and a number of other general acts were widely disseminated to a range of officials, right down to city level, and these were only effective in accordance with the zeal of those on the spot. The Syrian boundary inscriptions attest to the influence of the tetrarchic state and its servants in the remotest of places (edict no. 5), illustrated also by the Panopolis papyri, which, however, reveal the added contrast of local friction and obstruction. The limitation to the ambitions of the tetrarchic rulers was imposed by the freedom of manoeuvre enjoyed by both governors and local notables (Chapter 9). This was also true at the higher level of the relations between the senior emperor and his colleagues, though harmony generally prevailed so long as Diocletian remained in control (Chapter 11 Section i).

In the reign of Diocletian, a Latin court was for the first time permanently resident in the Greek east and for the first time it was enacting general legislation for widespread dissemination. Thus, it was only natural that it should circulate its authoritative pronouncements in the language of administration and law.³ The permanent copies set up in Latin also reflect the impetus from above, though more that of the

³ Millar (1977: 9, 573-4) suggests that the presence of the court worked in the opposite direction, as well, with the Greek intellectual climate around it contributing to the outbreak of the Great Persecution.

governor than the emperor. The city of Aphrodisias, at a time when it no longer inscribed the important imperial letters in Greek on the subject of its civic privileges,⁴ was not likely to have undertaken the erection of long general edicts in Latin other than at the behest of the governor. Even then the governor issued his own Greek edict, which only accentuated the credibility gap between the imperial words and those who were supposed to read them (Chapters 8 Section viii and 9 Section ii).

As the court became more settled in the east, or as the cost and labour involved in inscribing Latin became too excessive to be sustained amid the general epigraphic decline, permanent Latin documents largely died out.⁵ Indeed, our chronological limits for the tetrarchy neatly define the period in which these Latin inscriptions most commonly occur.⁶ Soon after his victory in 324, Constantine sent a letter throughout the eastern provinces—as good an example as any of unsolicited correspondence, being a lengthy personal apologia and Christian discourse, as well as an administrative act to undo the injustices of Licinius' rule.⁷ Yet it was circulated in Greek as well as Latin, and it is a partial version in Greek that has survived on papyrus.⁸

The existence of such apologies, including those issued to justify some imperial volte-face (as over the persecutions), shows how important was the imperial need to explain themselves to their subjects, to persuade them of their rulers' essential righteousness and *providentia*. Emperors had always enjoyed a close relationship with those trained in traditional classical rhetoric, whether listening to their displays of

⁴ The latest dates to the reign of Valerian and Gallienus (Roueché 1989: 4–8).

⁵ Note, as an exception, two Latin copies of a letter of Julian on *pedanei iudices* (CIL 3. 459 (Amorgos) and 3. 14198 (Mytilene); cf. CTh 1. 16. 8). Other single Latin texts from the east include the letter to the historian Eutropius as proconsul of Asia in 371 (Bruns' no. 97a = FIRA² i no. 108 = Pergami 1993: 566–7) and a letter of Constantius II (Oliver and Swift 1962). Two other letters are preserved in parallel Latin and Greek versions: Bruns' no. 97b = Pergami 1993: 601–3 (to Festus, 372/5) and CIL 3. 13640 = FIRA² i no. 97 = Amelotti and Migliardi Zingale 1985: 97–9 (Justin and Justinian, 527). None of these have the universality present in some tetrarchic examples. For Italy, note the letter of Valentinian I to Petronius Probus, 368/75 (Giardina and Grelle 1983 = AE 1984. 250 = Pergami 1993: 479–80); cf. CIL 6. 31982.*

⁶ Thus I would on principle assign a recently published Latin inscription from Knossos to the tetrarchic period as an imperial letter, in spite of its fragmentary state (Chaniotis and Preuss 1991: 193 = AE 1991. 1602; cf. 1990: 196). This is also suggested by the use of the term *tua dicatio*, which as seen in App. F is typical of this period and decreases in frequency later in the 4th cent.

⁷ Eus. VC 2. 24–42.

⁸ See Eus. VC 2. 23 and A. H. M. Jones (1954). The Orcistans, however, received and inscribed their documents in Latin (FIRA² i no. 95).

oratorical ability or employing them in the palatine *officia*. Imperial documents now bear the stamp of elaborate rhetorical styles more than ever before. Even the private rescripts can be composed in such a style (as Arcadius Charisius shows). Indeed, the needs of rhetorical style may even obscure the underlying law, by avoidance of precise technical expressions (letter no. 70), or else give rise to ambiguous metaphors (edict no. 31). The production of texts in the appropriate grand style is a central concern of government.

That the Prices Edict and the persecution of the Christians were unusually ambitious projects is not to be doubted. Although the latter was foreshadowed by Decius and Valerian earlier in the mid-third century, the former was unprecedented (Chapter 8 Section iv). Yet their promulgation, inscription, and enforcement relied upon governors and city officials. Further, both were failures, since neither prices nor Christians proved tractable. What could be a greater humiliation for a newly ambitious government than the rescission of its own acts? If the Prices Edict was not revoked by a specific document, certainly its permanent manifestations on stone were a reminder of its ephemeral pretensions. As regards the persecution, the pronouncements of relaxation or recantation reveal the rulers dressing up an inability to enforce their will as policy, clemency, and the fault of others. Even Constantine, having become directly involved in the Donatist controversy as a result of initiative from below, found that his attempts at manipulation and persecution did not work. The imperial gaze turned to regulating economy and orthodoxy, but the effective reach of government was crucially limited by lack of the necessary machinery to control either officials or the population at large.

Nor did the emperors necessarily learn from mistakes; for they did not regard the failures of their predecessors (or even their own failures) as the result of deficient administration or as an object-lesson in the constraints upon imperial power. Disaster was the result of a failure in piety, classically illustrated by the Christian view of the fate of the persecutors.⁹ With the correct harmony of divine providence and imperial providence, however, all should have been possible. Thus the tetrarchic governments, having extended the scope of their ambitions, could not remedy the limitations that thwarted them, but only cloak them in an obscuring layer of rhetoric.

⁹ Lact. *DMP* 1-6; 7. 11; 50. Constantine at Eus. *VC* 2. 27, 4. 11-12 and *Oratio ad Sanctos* 24-5. For Eusebius, see Trompf (1983; cf. 1992).

APPENDIX A

Diocletianic Ascriptions to the Gregorian Code

Appendices A and B largely follow the information set out in Rotondi (1922: 115–17).

<i>Coll.</i> 3. 4	<i>Prop. non. Dec.</i> 285.
<i>CGV</i> 3. 6. 4	<i>PP xiii k. Mai.</i> 286.
<i>CGV</i> 3. 7. 2	<i>PP iv id. Mai.</i> 286.
<i>Cons.</i> 2. 7	<i>PP vi k. Iul.</i> 286.
<i>CGV</i> 3. 6. 5	<i>PP viii k. Mart.</i> 287.
<i>Coll.</i> 6. 6	<i>Prop. v id. Iun.</i> 287 (cf. <i>Coll.</i> 6. 5 for <i>CH</i> date: <i>Prop. id. Mart.</i> 291).
<i>CGV</i> 10. 13. 1	<i>PP k. Sept.</i> 287.
<i>Cons.</i> 2. 6	<i>PP xvii k. Iul., ipsis VI et Constantio III cons.</i> This date is corrupt (= <i>CJ</i> 3. 38. 3 with the same diurnal date, but for 290).
<i>Cons.</i> 1. 9	<i>PP viii id. Sept., Dioc. V et Max. III cons.</i> Another corrupt date. Assigned by Honoré to 290 (<i>EL</i> ² 156 n. 151).
<i>Coll.</i> 1. 10	<i>Dat. pr. k. Dec.</i> 290 (= <i>CJ</i> 9. 16. 4).
<i>Cons.</i> 9. 9	<i>PP iii non. Oct., ipsis AA cons.</i> Rotondi (1922: 116) places this in 293, but assigned by Honoré to 290 (<i>EL</i> ² 156 n. 151, 157 n. 174, 159 n. 263).
<i>Cons.</i> 9. 18	<i>PP viii id. Apr.</i> 294.
<i>Cons.</i> 9. 19	<i>PP xiiii k. Nov.</i> 294.
<i>Coll.</i> 6. 4	<i>Dat. k. Mai.</i> 295, Damascus (= <i>CJ</i> 5. 4. 17).
<i>Coll.</i> 15. 3	<i>Dat. pr. k. Apr.</i> 302(?), Alexandria.

(Ascribed by marginal notation in the Vatican Fragments:)

FV 285. 286.

FV 286. *Proposita*, Sirmium (= *CJ* 8. 54. 3 with the year 290).

APPENDIX B

Diocletianic Ascriptions to the Hermogenian Code

<i>Coll.</i> 6. 5	<i>Prop. id. Mart.</i> 291. Poss. corrupt (cf. <i>Coll.</i> 6. 6 for <i>CG</i> date; <i>Prop. v id. Iun.</i> 287).
<i>Cons.</i> 6. 15	<i>PP vii id. Ian.</i> 293.
<i>Cons.</i> 6. 19	<i>PP x k. Mart.</i> 293 (= <i>CJ</i> 6. 30. 7).
<i>Cons.</i> 6. 10	<i>Datur pr. k. Mai.</i> 293, Heraclea (= <i>CJ</i> 8. 53. 11).
<i>Cons.</i> 6. 14	<i>PP k. Mai. AA et CC cons.</i> 293(?) (= <i>CJ</i> 4. 20. 7).
<i>Cons.</i> 4. 9	<i>PP iiii k. Iun.</i> 293 (cf. <i>CJ</i> 7. 16. 24).
<i>Coll.</i> 10. 3	<i>Subscripta viii k. Iul.</i> 293, Sirmium.
<i>CHV</i> 2. 1	<i>Scripta vii k. Oct.</i> 293, Sirmium.
<i>Cons.</i> 6. 13	<i>PP xi k. Nov.</i> 293.
<i>Cons.</i> 4. 11	<i>PP xviii k. Ian.</i> 293.
<i>LRB</i> 14. 3	(= <i>CJ</i> 8. 24. 2, with date <i>S v k. Ian.</i> 293)
<i>Cons.</i> 4. 10	<i>PP id. . . .</i> 293.
<i>Cons.</i> 6. 16	<i>PP</i> 293 (cf. <i>CJ</i> 3. 19. 1, Apr. 293).
<i>Collectio</i> 244-5	<i>S. k. Mart.</i> , Sirmium (Mommson 1860: 412, 436 restores the year as 294, accepted by Honoré, <i>EL</i> ² 165 n. 320).
<i>Coll.</i> 10. 4	<i>Subscripta vi k. Apr.</i> 294, Sirmium.
<i>Cons.</i> 6. 18	<i>PP iii k. Apr.</i> 294, Sirmium (cf. <i>CJ</i> 3. 31. 8, 6. 59. 4, 7. 16. 27).
<i>CHV</i> 1. 1	<i>Scripta vii id. Apr.</i> 294, Sirmium.
<i>Coll.</i> 10. 5	<i>Subscripta xiiii k. Nov.</i> 294(?), Appiaria (Assigned to secretary no. 17/18 by Honoré, <i>EL</i> ² 180 n. 553).
<i>Cons.</i> 6. 17	<i>PP vii k. Nov.</i> 294, Marcianopolis.
<i>Cons.</i> 5. 6	<i>PP iiii id. Dec.</i> 294, Nicomedia.
<i>Coll.</i> 10. 6	<i>Subscripta pr. id. Dec.</i> 294, Nicomedia (= <i>CJ</i> 4. 34. 10).
<i>Cons.</i> 6. 11	<i>Dat. viii k. Ian.</i> 294.
<i>Cons.</i> 6. 12	<i>Datum sub die viii k. Ian.</i> 294, Nicomedia.
<i>Cons.</i> 5. 7	<i>PP xii k. Apr.</i> 295, Mediolanum.

(Ascribed by marginal notation in the Vatican Fragments:)

FV 270 *Subscripta v k. Mai.* 294, Sirmium.

Note:

LRB 14. 1 This text gives details of two undated constitutions, but with named recipients. *LRB* refers to other constitutions from *CG* and *CH* at 14. 6–7, 38. 2–3, and 44. 4, but with no useful information as to recipients or dates. *FIRA*² suggests some constitutions from *CJ* to match the *LRB* information, but without asserting definitive identifications.

APPENDIX C

Private Rescripts of Constantine

Listed here are both certain and possible private rescripts of Constantine. All the *FV* texts are presumptive rescripts, though attribution to Constantine is not always certain. The three code texts are more dubious. *CTh* was supposed to exclude rescripts, although the code compilers may not always have been able to distinguish the true nature of texts more than a century old. Further, the two *CJ* texts might have come from a later edition of *CH* (although their western provenance makes that unlikely) or entered *CJ* from some source other than *CTh*. Note that each is restored to a place in his edition of *CTh* by Krüger: *CJ* 7. 32. 10 at *CTh* 4. 12. 1a (immediately before Mommsen's *CTh* 4. 11. 1) and *CJ* 11. 62. 1 at *CTh* 5. 12. 1 (= Mommsen's *CTh* title 5. 15).

1. *FV* 32. Heading lost. *PP*. Trier, 29 Aug. 312.

This is the only constitution of Constantine to predate the overthrow of Maxentius.

2. *FV* 291. Addressee lost. *PP*. Trier, 28 May 313.

Seeck, *RG* 161 (followed by Barnes, *NE* 71 and Liebs 1983: 486 n. 10) construed the fragmentary date . . . *III. cons.* as referring to 313, but it is possible that this represents Maximian or Constantius at Trier. See list of western rescripts, Ch. 4 Sect. ii. The style, with its accumulation of future tenses, does not appear to match any known tetrarchic *magister libellorum*.

3. *CJ* 11. 62. 1. To Cupitus. *PP*. Trier, 15 June 313.

This is a brief text on the donation of emphyteutic land, which is allowed without presidial approval (contra *CJ* 5. 71. 13–293), provided the rights of the fisc are left intact. This might be a private rescript, or perhaps a letter in answer to an official query.

The date is given by Seeck as 313 (*RG* 161, accepted by Barnes, *NE* 71). However, if this is a letter, the place of posting should reflect the geographical position of the recipient, not the emperor. Thus *PLRE* i. 234 dates it to 315, addressed to an official in Belgica Prima at Trier, while Constantine was *en route* to Italy. But if the text is taken as a private rescript, 313 must be regarded as correct to allow posting at the imperial residence.

4. *FV* 34. *Augg. et Caess.* To Fl(avia) Aprilla. *Subscripta* 21 July 313.

Attribution to Licinius is rejected by Nardi (1984). Seeck, *RG* 179 dates to 329.

5. *FV* 27. 313?

This fragmentary text contains the name . . . *ium Fortunatum militem*, though this is not in the dative usual for an addressee. The subscript has an incomplete date, which reads *ipso Aug. III consule* and might be restored as *Constantino Aug. III consule*, i.e. 313 (for this consular formula, see *FV* 34; Barnes, *NE* 95; *CLRE* 160).

6. *CJ* 7. 32. 10. To Maternus. *PP.* Trier, 22 Jan. 314.

Listed as a rescript by Liebs (1983: 486 n. 11). This constitution was posted at the imperial residence after the manner of a private rescript. The content is quite consistent with a private rescript, but there is no conclusive evidence.

7. *FV* 33. *Augg. et Caess.* To Rutilia Prima. *PP.* Rome, 13 Aug. 315.

This and the next rescript were posted during Constantine's decennalian visit to Rome.

8. *FV* 274. *Idem.* (see *FV* 273). To Aurelia Sabina or Gaudiosa. *D.* Rome, 13 Aug. 315.9. *FV* 273. *Dominus Constantinus et Caess.* No addressee. *D.* Milan, 19 Oct. 315.10. *FV* 290. Heading lost. *D.* Verona, 29 Sept. 316?

The consular date is lost. Seeck (*RG* 165), Barnes, (*NE* 73), and Liebs (1983: 486 n. 13) propose 316. Honoré (*EL*² 166 n. 325, 177 n. 502) suggests Maximian as issuer in 295. See list of western rescripts.

11. *FV* 287. *Constantinus et Caess.* . . . Addressee missing. 318.12. *CTh* 1. 2. 4. To Crepereius Donatianus. *PP.* 13 Dec. 319.

Listed as a private rescript by *PLRE* i. 267, Millar (1977: 244 n. 31), and Liebs (1983: 486 n. 14). The text allows heirs to use rescripts not used by deceased recipients, but this does not prove the constitution itself a private rescript.

13. *FV* 113.

Haenel (1857: 190) attributed this text to Constantine. It occurs in a sequence of extracts from Paul, and itself dissents from Paul's approach. A Constantinian date is suggested by the style, especially the phrase *auxilium mansuetudinis nostrae*. Third-person references to Renatus (the plaintiff) and Maximus the judge, make it difficult even to see whether this is a private rescript or a letter. Perhaps it could be a judgement on appeal. There is not enough information to indicate whether Maximus might be identified with the urban prefect of 319–23. For alternative reconstructions, see *IA* ii. 246–8.

APPENDIX D

Imperial Letters 314–324

This appendix lists letters for the period not covered by the more detailed catalogue in Ch. 6. Comments are mainly restricted to matters of dating. Certainty of dating, place, or recipient is often lacking. In general, I have followed Seeck, *RG*, citing his name after the entry where I accept his emendations or joining of texts. Where his work has been superseded, I give more recent views. In a few cases I make suggestions of my own in an attempt to tidy up confusions, but such suggestions can only be provisional. I have not noted cases of letters whose MS dates fall within this period, but which are generally emended to a later period. See, for instance, *PLRE* i. 783 (Rufinus 25) for texts addressed to Rufinus *pp* (redated to the reign of Constantius II), and *PLRE* i. 284–5 (Evagrius 2) for texts addressed to Evagrius *pp*.

Abbreviations

D. = *Data* (given); *A.* = *Accepta* (accepted/received); *PP.* = *ProPosita* (posted); *pu* = *praefectus urbi*; *pp* = *praefectus praetorio*.

314. VOLUSIANUS AND ANNIANUS CONSULS

CTh 9. 5. 1 (*CJ* 9. 8. 3) = *edictum de Accusationibus* (edict catalogue, no. 35) (Licinius). Maximus *pu* (*pp*?) *PP.* 1 Jan. 314.

As discussed in the edict catalogue and Ch. 11 Sect. ivc (cf. Corcoran 1993: 115–17), this may be a letter of Licinius, sent to his otherwise unknown praetorian prefect Maximus as part of the promulgation of the edict.

CIL 5. 2781 lines 31–4 = Bruns⁷ no. 95. Letter appended to Padua copy of *edictum de accusationibus*.

This letter deals with abuses by the *Caesariani* in Rome and so the addressee is presumably the urban prefect, but the relationship of this text to the edict and its possible date (it must be later) are obscure. See Ch. 11 Sect. ivc.*

CJ 7. 32. 10. Maternus. *PP.* Trier, 22 Jan. 314.

A possible private rescript. See App. C.

CTh 12. 11. 1 (*CJ* 11. 33. 2). *Locrio Verino suo salutem.* *PP.* 30 Jan. 314.

Dated by Seeck, *RG* 169 to 320, but kept in 314 by *PLRE* i. 951 and Barnes, *NE* 118.

CTh 2. 7. 1 (*CJ* 3. 11. 2). Ursus vicarius. *D.* 6 Mar. 314.

CTh 5. 8. 1, 13. 5. 1, *CJ* 12. 1. 2. Volusianus (*pu*). *D.* 19 Mar., *PP.* Rome, 24 Apr. 314 (Seeck).

CTh 3. 30. 1. No recipient. *D.* Trier, 26 Mar. 314.

CTh 4. 12. 1 (Licinius?). Probus. *PP.* 1 Apr. 314.

There is no need to attribute this text to Licinius. See Ch. 11 Sect. ivc (cf. Corcoran 1993: 114).

CJ 6. 1. 3 (Licinius). Probus. Undated, but associated by Seeck, *RG* 162 with the preceding. See Ch. 11 Sect. ivb (cf. Corcoran 1993: 105–7).

CJ 7. 22. 3. (Licinius) *Exemplum sacrarum litterarum Constantini et Licinii AA. ad Dionysium vice praefectorum agentem.* *D.* 29 Apr. 314.

For attribution to Licinius, see Ch. 11 Sect. ivb (cf. Corcoran 1993: 105–7).

CJ 3. 1. 8. (Licinius) *Imp. Constantinus et Licinius ad Dionysium.* *D.* 15 May 314.

Optatus, *App.* III (Maier 1987 no. 18, Silli 1987 no. 6). Aelafius (vicar of Africa). Spring 314.

On the identity of Aelafius, see note to App. F Table 1.

Eus. *HE* 10. 5. 21–4 (Maier 1987 no. 19, Silli 1987 no. 7). Chrestus, bishop of Syracuse. Spring 314.

Optatus, *App.* V (Maier 1987 no. 21, Silli 1987 no. 8). *Constantinus Augustus episcopis catholicis carissimis fratribus salutem.* Aug./Sept. 314.

On this letter and the defence of its Constantinian authorship, see Odahl (1993); cf. Digeser (1994) for Lactantian influence.

CTh 6. 35. 1 (*CJ* 12. 28. 1). *Palatinis bene meritis suis salutem.* *D.* Trier, 29 Oct. 314.

CTh 1. 12. 1, 1. 12. 3 (*CJ* 1. 35. 1), 8. 10. 1 (*CJ* 12. 61. 1; cf. Amelotti and Migliardi Zingale 1985: 26), 10. 15. 1 (*CJ* 2. 8. 3), 11. 1. 2, 11. 7. 1 (*CJ* 10. 19. 1). *Aeliano proconsuli Africae.* *D.* Trier, 8 Nov. 314; A. Carthage, 15 Feb. 315.

These excerpts have widely differing dates, but are usually reassembled into one letter. For the dating, see Delmaire (1992: 319–20), as against 313/14 proposed by Seeck, *RG* 161 (accepted by Barnes, *NE* 170).

This set of extracts deals with judicial procedure and fiscal administration in Africa. One passage refers specifically to proconsuls (*CTh* 1. 12. 3; cf. 1. 23. 2 to Proculus, proconsul of Africa). Note that the law was accepted on the same day that Aelianus heard the case against Felix of Abthungi (Augustine, *Don. Post Gesta* 33. 56).

CTh 11. 29. 1, 11. 30. 1 (cf. *CJ* 7. 61. 1. 2). Claudius Plotianus, *corrector Lucaniae et Brittiorum*. *D.* Trier, 27 Dec. 314; A. Rhegium, 6 Feb. 315.

Though the MSS dates differ by a few days, these two texts should belong together (Seeck, *RG* 162). However, I have rejected Seeck's consular dating (vitiating by his placing of Cibalae in 314) and follow Delmaire (1992: 325).

CTh 1. 2. 1. Iulius Antiochus, *praefectus vigilum*. *D.* Trier, 30 Dec. 314.

315. CONSTANTINE IV AND LICINIUS IV CONSULS

CTh 11. 30. 4, 13. 5. 2 and 13. 5. 3. Amabilianus, *praefectus annonae Africae*. *D.* Trier, 1 Jan., *PP. Constanz*. = Constantine?, 28 May 315.

Various datings have been suggested to make sense of the disparate subscripts, which contain the easily confused *Ian.* and *Iun.* and imperial consulships. Seeck, *RG* 162 proposed June 314 and Jan. 315; and *PLRE* i. 49, Dec. 315 and May 316.

The above suggestion does the least violence to the transmitted subscripts. For date of issue I have emended the subscript of *CTh* 13. 5. 2 from *Iun.* to *Ian.* For posting, I have emended the consular year of *CTh* 13. 5. 3 from 319 to 315. Posting in Dec. 315 (*CTh* 11. 30. 4) is also possible, but the time-lag is perhaps too great.

On the *praefectus annonae Africae*, see Rickman (1980: 202-3) and Sirks (1991: 15 n. 27). However, Sirks (1991: 293-4) thinks that *Africae* is an incorrect addition and that Amabilianus was simply *praefectus annonae*. If so, *Constanz* as the place of posting need not be taken as a corruption of the name of the city of Constantine in Africa, but simply as a corruption from Constantine's name in the consular date.

CTh 8. 5. 1. Constantius. A. Caralis, 22 Jan. 315.

Constantius was praetorian prefect from 324 and *PLRE* i. 225 emends to 326. However, he could have been governor or vicar at an earlier date. Compare *CTh* 1. 16. 2 (to Bassus, posted at Caralis in 317) which is usually emended (330, *PLRE* i. 154; 331, Seeck, *RG* 181).

CJ 3. 26. 5. Ursus (*vicarius*). *D.* 5 Feb. 315.

CTh 9. 34. 2. Aelianus, proconsul of Africa. *PP.* Carthage, 25 Feb. 315 (Seeck).

This text could probably be joined to the other texts of Aelianus (Nov. 314/ Feb. 315).

CTh 11. 36. 2. Volusianus *pu.* *PP.* Rome, 25 Feb. 315.

CJ 2. 12. 21. *ad concilium provinciae Africae*. *PP.* Hadrumetum, 12 Mar. 315.

CTh 10. 14. 1 (Licinius?). Mygdonius, *castrensis palatii*. *D.* Antioch, 21 Mar. 315.

Dated by Seeck to 346. See Ch. 11 Sect. ivc no. 1 (Corcoran 1993: 108-10).

CTh 10. 18. 1. *Rationales*. *D.* 30 Mar. 315.

CTh 11. 36. 3. Aelianus, proconsul of Africa. *PP.* Carthage, 26 Apr. 315 (Seeck).

This text could be joined to the other texts of Aelianus (Nov. 314/Feb. 315).

Optatus, *App.* VI (Maier 1987 no. 25, Silli 1987 no. 9). *Constantinus Augustus episcopis*. May 315.

Augustine, *Ep.* 88. 4 = *C. Cresc.* 3. 70. 81 (Maier 1987 no. 23, Silli 1987 no. 11). *Imperatores Caesares Flavius Constantinus Maximus et Valerius Licinianus Licinius ad Probianum proconsulem Africae*. May/June 315.

CJ 11. 62. 1. Cupitus. *PP.* Trier, 15 June 315.

The date is given by Seeck as 313 (*RG* 161, accepted by Barnes, *NE* 71). For the possibility that this is a private rescript, see *App. C. PLRE* i. 234 dates it to 315, addressed to an official in Belgica Prima at Trier.

CTh 8. 18. 1 (*CJ* 6. 60. 1). *consulibus, praetoribus, tribunis plebis, senatui*. *D.* Aquileia (Aquaviva), 18 July, *Recitata apud Vettium Rufinum pu in senatu* 5 Sept. 315 (Seeck).

The reference to the consuls implies that suffectus had now taken over from the imperial ordinary consuls. See also letter catalogue, no. 62.

CTh 9. 18. 1 (*CJ* 9. 20. 16). Domitius Celsus, vicar of Africa. *D.* 1 Aug. 315.

CTh 11. 30. 3. Probianus, proconsul of Africa. *D.* Rome, 25 Aug. 315.

CTh 12. 1. 2. Crispinus. *D.* 1 Oct. 315.

Dated by Seeck, *RG* 200 to 353, as interpreting *CTh* 11. 30. 10 (see July 320).

Optatus, *App.* VII (Maier 1987 no. 26, Silli 1987 no. 10). Celsus, vicar of Africa. Late 315.

316. SABINUS AND RUFINUS CONSULS

CTh 1. 22. 1 (*CJ* 1. 48. 1). Domitius Celsus (vicar of Africa). *D.* Trier, 11 Jan. 316.

CTh 9. 19. 1 (*CJ* 9. 22. 21) and 12. 1. 3 (*CJ* 10. 32. 15). Mecilius Hilarianus, *corrector Lucaniae et Brittiorum*. *D.* 30 Jan., A. 1 Aug. 316.

CTh 9. 40. 2 (*CJ* 9. 47. 17). Eumelius (vicar of Africa). *D.* Cabillunum, 21 Mar. 316 (Seeck; also Barnes, *NE* 73).

This is Constantine's famous bar on the branding of the face (*quae ad similitudinem pulchritudinis caelestis figurata est*), one of the few code texts with explicit Christian motivation.

CTh 2. 6. 1. Iulius Verus, *praeses* of Tarraconensis. *D.* Vienne, 6 May 316.
Possibly to be identified with Julius Severus, vicar of Italy. See *PLRE* i. 953 (Verus 3).

CTh 8. 5. 2 (*CJ* 12. 50. 1) (Licinius?). Titianus. *D.* 14 May 316.
See Ch. 11 Sect. ivc (Corcoran 1993: 114).

CJ 7. 16. 41 (cf. *PSI* 1347). (Licinius) *Impp. Constantinus et Licinius AA. ad Titianum praesidem Cappadociae*. Undated, c.316?
See Ch. 11 Sect. ivb (Corcoran 1993: 107).

CTh 4. 11. 1. Vettius Rufinus *pu. PP.* Rome, 23 May 316 (Seeck).

CTh 11.30.5 (*CJ* 7. 62. 13) and 11.30.6 (*CJ* 1. 21. 2). *Petronio Probiano suo salutem* (proconsul of Africa). *D.* Arelate, 13 Aug., *PP.* Theveste, 15 Oct. 316.

Augustine, *C. Cresc.* 3. 71. 82 and *Don. Post Gesta* 33. 56 (Maier 1987 no. 27, Silli 1987 no. 12). Eumelius, vicar of Africa. 10 Nov. 316.

CTh 9. 1. 1 (*CJ* 3. 24. 1). Octavianus, *comes* of Spain. *D.* Serdica, 4 Dec. 316, *A.* Córdoba, 3 Mar. 317.

CJ 1. 13. 1 (Licinius?). *Protophenes episcopus* (of Serdica; Millar 1977: 591). *D.* 27 Dec.? 316.

The transmitted date is June 316, implying issue by Licinius (at Serdica?). See Warmington (1989: 123 n. 28).

Seeck, (*RG* 88, 173) emended the year from 316 to 323, on the grounds that it refers back to *CTh* 4. 7. 1 (to Hosius, Apr. 321). However, Constantine is known to have issued a third law on this topic (manumission in church; Sozomen, *HE* 1. 9. 6), which is not extant and may have been the earliest (perhaps dating to 313 like the early texts on clerical immunity) and thus the one referred to in the present text.

Barnes (*NE* 73 n. 116) proposes to keep the MS date 316, while emending *lun.* to *lan.* so that Constantine could be present at Serdica on 8 Dec. 316. However, his emendation would give 8 Jan. 316. An emendation from *vi id. lun.* to *vi k. lan.* (27 Dec. 316) would give the result Barnes desires, and this is what I hesitantly adopt.

317. GALLICANUS AND BASSUS CONSULS

CTh 12. 1. 4. Octavianus, Count of Spain. *PP.* 19 Jan. 317.

CTh 4. 12. 2. Only the *interpretatio* survives. *D.* 28 Jan. 317.

CTh 10. 11. 1 (*CJ* 10. 13. 1). *Rationales* of Spain. *D.* 15 Mar. 317.

The letter uses the singular, so may be for the diocesan *rationalis* alone (Delmaire 1989a: 181 n. 30).

CTh 9. 10. 1 (*CJ* 9. 12. 6) and 8. 12. 2 (*CJ* 8. 53. 26). Aconius Catullinus, proconsul of Africa. *D. Serdica*, 17 Apr. 317 (Seeck).

CTh 11. 30. 7 (*CJ* 7. 62. 14). Bassus *pu. D. Sirmium*, 6 June 317.

CTh 1. 2. 3 (*CJ* 1. 14. 1). Septimius Bassus, *pu. D.* 3 Dec. 317 (Seeck).

CJ 6. 1. 4. Valerianus. *D. Thessalonica*, 27 Dec. 317 (emended).

For the emended date, see Barnes, *NE* 73 n. 117. The recipient may be identified with the next addressee below. See *PLRE* i. 938–9 (Valerianus 4 and 15).

CTh 6. 38. 1 (*CJ* 12. 32. 1). Paternus Valerianus. Undated.

Dated by Seeck, *RG* 165 to 19 Jan. 317, by analogy with *CTh* 12. 1. 4.

318. LICINIUS V AND CRISPUS CAESAR CONSULS

CTh 6. 22. 1. Severus *pu* (vicar of Italy?) *D. Sirmium*, 23 Jan. 318.

PLRE i. 836 (Severus 25) and Barnes, *NE* 144 assign this and another four texts to Julius Severus as vicar of Italy in 318. Dupont (1973: 329) keeps the MS date of 321 for this text, while Seeck (*RG* 173) assigned this to Severus as *pp* in 324.

CTh 11. 29. 2 (*CJ* 7. 61. 1), *CJ* 3. 11. 3. *Profuturus praefecto annonae. D. Sirmium*, 7 Feb. 318 (Seeck).

Barnes, (*NE* 74) retains *CTh* 11. 29. 2 in 319. Gaudemet (1992: 343) supposes that this and the next text to Catullinus form the 'African' parts of a general law.

CJ 3. 11. 4. Catullinus, proconsul of Africa. *D. Sirmium*, 9 Feb. 318.

CTh 9. 10. 2. Bassus *pu. D. (PP.?) Rome*, 10 Mar. 318 (Seeck).

CTh 6. 35. 4. Julius Verus (Severus?) *vic. Italiae. PP.* 15 Mar. 318.

See *PLRE* i. 836 and Barnes, *NE* 144 for the identification with Julius Severus and the emendation to 318. Seeck (*RG* 171) and Dupont (1973: 329 n. 136) keep the MS date of 321.

CTh 2. 6. 3, 5. 1. 1 (cf. 5. 1. 2), 11. 35. 1 (*CJ* 7. 66. 6), *CJ* 3. 36. 26. Bassus *pu. PP.(D.?) Sirmium, PP. Rome* (19 May, 321—MSS), 19 May 318.

A highly confusing set of subscripts for texts that may all come from one law. Seeck places some of these in both May and Dec. 318 (*RG* 166–7). I have presumed posting in May at Rome, after issue from Sirmium on an unspecified date earlier in the year.

CTh 9. 16. 3 (*CJ* 9. 18. 4). Bassus *pu. D. Aquileia*, 23 May 318 (Seeck).

CTh 11. 30. 9 (*CJ* 7. 62. 15). Severus vicar (of Italy?). *D. Aquileia*, 22 June 318 (Seeck; Barnes, *NE* 144).

- CTh* 1. 27. 1 (Licinius?). Acephalous. *D.* Constantinople?, 23 June 318.
See Ch. 11 Sect. ivc no. 3 (Corcoran 1993: 111–13).
- CTh* 12. 1. 6 (*CJ* 5. 5. 3). Patroclus. *D.* Aquileia, 1 July 318 (Seeck).
- CJ* 6. 56. 3. Catullinus, proconsul of Africa. *D.* 27 July 318 (Seeck).
- CTh* 7. 22. 2. Severus (vicar of Italy). *D.* Aquileia, 30 July 318 (Seeck; Barnes, *NE* 144).
- CTh* 11. 16. 1 (*CJ* 11. 65. 2). Catullinus, proconsul of Africa. *PP.* Carthage, 27 Aug. 318 (Seeck).
- CTh* 8. 18. 2. Julius Severus (vicar of Italy). *D.* Milan, 7 Sept., *A.* 7 Oct. 318 (Seeck; Barnes, *NE* 144).
- CTh* 8. 12. 4. Bassus *pu.* *D.* 7 Oct. 318 (Seeck).
- CTh* 3. 17. 1. Bassus *pu.* *D.* Aquileia, 12 Oct. 318 (Seeck).
- CTh* 1. 16. 3 (*CJ* 7. 49. 2) and 2. 6. 2. Felix, *praeses* of Corsica. *D.* Sirmium, 24 Oct. 318 (Seeck).
- CTh* 9. 15. 1 (*CJ* 9. 17. 1). Verinus, vicar of Africa. *D.* 16 Nov. 318, *A.* Carthage, 14 Mar. 319.
- On this text and its subject (parricide), see Martino (1976).
- CTh* 14. 25. 1. Catullinus, proconsul of Africa. *D.* Sirmium, 12 Dec. 318 (Seeck).
- IL Afr.* 269 (Thabbara/Henchir-Kasbat). *Have Catulline karissime . . . salve Catulline karissime.* 317/319.*

319. CONSTANTINE V AND LICINIUS CAESAR CONSULS

- CTh* 9. 1. 2 (*CJ* 9. 40. 2). Januarius (vicar of Moesia?). *D.* 13 Jan., *A.* Corinth, 28 July 319.
- CTh* 2. 4. 1 (*CJ* 5. 40. 2). Symmachus (proconsul of Achaëa). *D.* Sirmium, 4 Feb., *A.* Corinth, 8 Mar. 319.
- CJ* 6. 1. 5. Januarius (vicar of Moesia?). *D.* 14 Feb. 319.
- See *PLRE* i. 453, Barnes, *NE* 142–3; and Delmaire (1989a: 31). Associated by Seeck with the undated *CJ* 11. 68. 2 (but later than 11. 68. 1 of 325), addressed to Januarius, *comes Orientis* (emended to *comes rei privatae*).
- CJ* 11. 63. 1. No addressee. *PP.* Carthage, 9 Mar. 319.
- This could be an edict.
- CTh* 10. 8. 2. Priscus *rationalis*. *D.* Sirmium, 11 Mar. 319.
- Delmaire (1989a: 32) suggests 326 or 329.

CTh 9. 21. 1. Verinus (vicar of Africa). *D. et PP.*(?) 18 Mar. 319.

CTh 9. 34. 1. Verinus, vicar of Africa. *PP.* Carthage, 29 Mar. 319.

CTh 11. 30. 8. Bassus *pu.* *PP.* Rome, 29 Mar. 319.

CTh 2. 19. 1 (*CJ* 3. 28. 27). Lucius Verinus (vicar of Africa). *D.* Sirmium, 13 Apr. 319.

CJ 8. 52. 2. Proculus (proconsul of Africa). *D.* 24 Apr. 319.

CTh 15. 3. 1 (*CJ* 11. 65. 1). Proculus, proconsul of Africa. *PP.* Carthage, 7 May 319.

CTh 9. 12. 1 (*CJ* 9. 14. 1). Bassus (*pu.*) *D.*(*PP.*?) Rome, 11 May 319.

CTh 11. 27. 1. Ablabius (vicar of Italy?). *D.* Naissus, 13 May 319 (emended; cf. Corcoran 1993: 105 n. 44), (315 MSS, 329 Seeck).

Given the slender *fasti* for the vicariate of Italy (Barnes, *NE* 144), this constitution, referring to Italy, could well have been issued to Ablabius as vicar. Constantine was at Naissus in July 319 (see below).

CTh 10. 1. 2. Severus *rationalis* of Africa. *PP.* *Romae in foro Traiani*, 17 May 319.

CTh 8. 1. 1 (Licinius?). Leontius. *PP.* Hierapolis, 9 June 319.

This text should probably be attributed to Constantius II (dated by Seeck to 343). See discussion in Ch. 11 Sect. ivc no. 4 (Corcoran 1993: 113).

CJ 2. 12. 22. Bassus *pu.* *D.* 19 June 319.

CTh 4. 9. 1 (*CJ* 7. 10. 7), *CJ* 7. 19. 7. Bassus (*pu.*) *PP.* 15 July 319 (Seeck).

FV 36. *Augg. et Caess.* Bassus (*pu.*) 317/319.

CTh 2. 15. 1. Symmachus, *v(ir) c(larissimus)* (proconsul of Achaëa). *D.* Naissus, 25 July 319.

On the identification of the office, see Barnes, *NE* 103–4.

CTh 2. 16. 2 (*CJ* 2. 52. 5). Bassus (*pu.*) *D.* Naissus, 25 July, *PP.* Rome, 7 Oct. 319 (Seeck).

CTh 6. 35. 2. Proculus, proconsul of Africa. *D.* 27 July 319 (Seeck).

CTh 9. 40. 3. Festus, *praeses* of Sardinia. *D.* 29 July 319.

CTh 3. 1. 1 and 14. 3. 1. Profuturus, *praefectus annonae*. *PP.* 13 Aug. 319.

CTh 12. 1. 16 (*CJ* 10. 32. 18). No recipient. *D.* Serdica, 29 Sept. 319 (Seeck).

CTh 9. 10. 3 (*CJ* 9. 12. 7). Bassus *pu.* *PP.* Rome, 6 Oct. 319.

CTh 3. 5. 2 (*CJ* 5. 3. 15). Maximus *pu.* *D.* 16 Oct., *PP.* Rome, 27 Oct. 319.

CTh 2. 10. 1-2. Antiochus, *praefectus vigilum.* *D.* Serdica, 1 Nov. 319.

CTh 11. 7. 2. Pacatianus, vicar of the Britains. *D.* 20 Nov. 319.

See discussion by Stevens (1947).

CTh 9. 37. 1 (*CJ* 9. 42. 2). Januarinus *pu.* (vicar of Moesia?). *D.* Serdica, 26 Nov. 319.

CTh 1. 2. 4. Crepereius Donatianus. *PP.* 13 Dec. 319.

A possible private rescript. See App. C.

CTh 1. 12. 2, 4. 16. 1 (*CJ* 7. 50. 3, *ALRW* 1. 20). Proculus (proconsul of Africa). *D.* 26 Dec. 319.

320. CONSTANTINE VI AND CONSTANTINE CAESAR CONSULS

CTh 2. 22. 1, *CJ* 6. 7. 2 and 7. 1. 4. Maximus *pu.* *D.* Serdica, 30 Jan. 320 (Seeck).

CTh 9. 16. 1 (*CJ* 9. 18. 3). Maximus (*pu.*) *PP.* Rome, 1 Feb. 320 (Seeck).

CJ 7. 57. 7. Bassus *pp.* *D.* 18 Mar. 320.

Seeck emended away evidence for Bassus as praetorian prefect (to Crispus), but for laws attributed to Bassus at this time, see *PLRE* i. 154 (Bassus 14).

CTh 9. 19. 2 (*CJ* 9. 22. 22). Maximus *pu.* *PP.* in *foro Traiani*, 25 Mar. 320 (Seeck).

CTh 10. 1. 4. Dometius Dracontius, *magister privatae rei Africae.* *D.* Serdica, 19 May 320.

CTh 9. 1. 5. Maximus *pu.* *D.* Sirmium, 22 May, A. Rome 320 (Seeck).

CTh 11. 30. 10. Crispinus. *D.* 8 July 320.

Dated by Seeck, *RG* 199 to 353, as interpreting *CTh* 11. 30. 19 (352).

CTh 16. 2. 3. Bassus *pp.* *PP.* 18 July 320.

CTh 15. 1. 4. *Have Felix carissime nobis.* *D.* Sirmium, 22 July 320 (Seeck).

CTh 2. 11. 1. Furius Felix (*praeses* of Corsica?). *D.* 28 July 320.

CJ 1. 51. 2. Bassus *pp.* *D.* 18 Aug. 320.

CTh 10. 19. 1. Maximus, *rationalis* of Africa. *D.* 30 Sept. 320.

CTh 9. 21. 2 (*CJ* 7. 13. 2 and 9. 24. 1). Januarinus (vicar of *pp* at Rome). *D.* 20 Nov. 320, (*PP.*?) Rome, 321.

CTh 9. 34. 3. Januarius *agens vicariam praefecturam* (at Rome). *PP.* Rome, 4 Dec. 320.

CTh 16. 10. 1. Maximus *pu.* *D.* Serdica, 17 Dec. 320, A. 8 Mar. 321.

CTh 9. 3. 1 (*CJ* 9. 4. 1). Florentius *rationalis.* *D.* Serdica, 31 Dec. 320 (Seeck).

321. CRISPUS CAESAR II AND CONSTANTINE CAESAR II CONSULS

CTh 2. 19. 2 (*CJ* 3. 28. 28). Claudius, *praeses* of Dacia. *D.* Serdica, 6 Feb. 321.

CTh 9. 42. 1 (*CJ* 5. 16. 24 and 9. 49. 9). Petronius Probianus. *D.* Serdica, 27 Feb. 321.

Probianus was proconsul of Africa 315–17, consul 322, and urban prefect 329–31, but there is no clue as to his office as recipient here, nor is there any obvious emendation so that the date could coincide with a known period of office (see *PLRE* I. 734 (Probianus 3) and Barnes, *NE* 101).

CTh 11. 19. 1 and *CJ* 11. 62. 2. Dometius Dracontius (*magister privatae rei Africa*). *D.* Sirmium, 17 Apr., A. Carthage, 18 May 321.

CTh 4. 7. 1 (*CJ* 1. 13. 2). Hosius *episcopus.* *D.* 18 Apr. 321.

Augustine, *Don. Post Gesta* 31. 54 and 33. 56, and *Brev. Coll.* 3. 22. 40. Verinus vicar (of Africa). 5 May 321.

Augustine refers to this letter but does not quote any text. It ended the harassment and exile of the Donatists.

Optatus, *App.* VIII (Maier 1987 no. 30, Silli 1987 no. 13). *Constantinus Augustus universis episcopis per Africam et plebi ecclesiae catholicae.* May 321.

This text explains the cessation of the persecution against the Donatists.

CJ 8. 10. 6. Helpidius *agens vicem pp.* (at Rome). *D.* Viminacium, 27 May 321.

CTh 2. 18. 1 (*CJ* 3. 1. 9) and 11. 30. 11 (*CJ* 7. 62. 16). Maximus (*pu.*) *D.* Sirmium, 12 June 321 (Seeck; also Barnes, *NE* 75).

CTh 4. 13. 1 (*CJ* 4. 61. 4). Junius Rufus, *consularis* of Aemilia. *D.* 1 July 321.

CTh 2. 8. 1 (cf. *CJ* 3. 12. 7) and *CJ* 3. 12. 2. Helpidius (vicar of *pp* at Rome). *PP.* Caralis, 3 July 321 (Seeck).

PLRE i. 413 dates *CJ* 3. 12. 2 to 3 Mar. 321. Constantine's legislation on the observance of Sunday (*dies solis*) is also referred to at Eus. *VC* 4. 18 and 23, Eus. *Laudes Constantini* 9. 10 and 17. 14, and Sozomen, *HE* 1. 8. 11. Hall (1998: 100–2) argues that Eusebius may in part be giving a Christian gloss to Constantine's legislation reaffirming Jewish rights on the Sabbath. Certainly Eusebius has his own priorities in citing and interpreting Constantine's legislation (Warmington 1993: 201–2).



CTh 4. 13. 2 (*CJ* 4. 61. 5). Menander (count of Africa). *D.* 13 July 321.

CTh 13. 3. 1 (cf. *CJ* 10. 53. 6). Volusianus. *PP.*? Sirmium, 1 Aug. 321.

For references to discussion as to the date and identity of the office-holder, see Barnes, *NE* 130.

CTh 4. 13. 3 (*CJ* 4. 61. 5). Menander (count of Africa). *D.* 1 Aug. 321.

CTh 9. 43. 1 (*CJ* 9. 51. 13). Maximus *pu.* *D.* Sirmium, 14 Sept. 321.

CTh 1. 4. 1. Maximus, *pu.* *D.* 28 Sept. 321.

CTh 16. 8. 3. Decurions of Cologne. *D.* 11 Dec. 321.

This text deals with the liability of Jews to serve in their local *curia*, discussed by Linder (1987: 120-4). He describes this text as a general law, but it is more likely to be a rescript in answer to an embassy from Cologne, although this may have also generated the general ruling. *

322. PROBIANUS AND JULIANUS CONSULS

CTh 9. 1. 3. Agricolaus. *PP.* 9 Feb. 322.

CJ 3. 11. 5. Maximus (*pu.*) *PP.* Rome, 25 Mar. 322.

CTh 15. 1. 2. Menander (count of Africa). *D.* Sirmium, 11 Apr. 322 (Barnes).

This text is too early in 321 for Menander as count of Africa, so that Barnes (*NE* 129, 146) emends to 322.

CTh 2. 4. 2 and 2. 18. 2 (*ALRW* 2. 3). Maximus, *pu.* *D.* Sirmium, 23 May 322.

CTh 4. 8. 4 (*CJ* 7. 16. 42; cf. *PSI* 1347). Maximus *pu.* *D.* Sirmium, 12 June 322.

CTh 11. 27. 2. Menander (count of Africa). *D.* Rome?, 6 July 322.

Rome must be an error. Constantine was at Sirmium at this time (see preceding and succeeding entries here), so that Seeck, *RG* 108 suggested nearby Bononia.

CTh 4. 8. 5. Maximus *pu.* *D.* Sirmium, 20 July 322.

CTh 9. 38. 1. Maximus *pp?* (*pu.*) *A.* Rome, 30 Oct. 322.

CTh 3. 32. 1. Severus. *D.* Serdica, 18 Dec. 322.

For possible identification of the recipient as vicar of Italy, see Barnes, *NE* 130.

323. SEVERUS AND RUFINUS CONSULS

FV 249 (*CTh* 3. 30. 2, 8. 12. 1, *CJ* 5. 37. 21, 8. 53. 25, *Cons.* 9. 13). Maximus *pu.* *D.* Rome? and *PP.* in *foro divi Traiani*, 3 Feb. 323 (Seeck; also Simon 1977: 84-6).

CTh 4. 8. 6 (*CJ* 7. 18. 3 and 8. 46. 10). Maximus *pu. D.* Thessalonica, 15 Feb./ 18 May 323 (Seeck; also Barnes, *NE* 75).

CJ 3. 12. 3. Severus. *D.* Sirmium, 13 Apr. 323.

For possible identification of the recipient as vicar of Italy, see Barnes, *NE* 130 and Dupont (1973: 329).

CTh 11. 30. 12 and 12. 1. 8 (*CJ* 1. 56. 1) (Licinius?). Florenti(n)us. *D.* Constantinople?, 13 Apr. 323.

For discussion of the question of attribution to Licinius, see Ch. 11 Sect. ivc no. 3 (Corcoran 1993: 113).

CTh 7. 1. 1. (*CJ* 12. 35. 9), *CTh* 7. 12. 1. (*CJ* 12. 42. 1). Aelius *pp/Aelianus*. *D.* 28 Apr. 323.

The recipient is unknown, though unlikely to be a praetorian prefect; perhaps a military commander in the area associated with the Gothic incursions of 323, since both texts refer to barbarians. See *PLRE* i. 17 (Aelianus 3). On the Gothic campaigns at this time (and the Goths as allies of Licinius), see Wolfram (1988: 59–60).

CTh 8. 12. 3. Cassius *pu* (vicar of *pu*?). *D.*(*PP*?) Rome, 1 May (316 MSS) 323 (Seeck).

Julius Cassius was vicar of the urban prefect in July–Aug. 318, during the prefect's absence at court (Chronographer of 354 in *Chron. Min.* i. 67). Perhaps he deputized in this way on other unrecorded occasions. The date was emended by Seeck, *RG* 173 on the grounds that it must post-date *FV* 249.

CTh 11. 16. 2. Ulpius Flavianus, *consularis Aemiliae et Liguriae*. *D.* 21 May, *lecta apud acta*, 323.

CTh 16. 2. 5. Helpidius (vicar of *pp* in Rome). *D.* Sirmium, 25 Dec. 323 (Barnes).

With its reference to priests being compelled *ad lustrorum sacrificia*, this text is often associated with the closing celebrations of Licinius' *quindeccennialia* (his *dies imperii* was 11 Nov.; note *ILS* 8940, recording a *iussu sacrum* of the two Licinii for annual sacrifices to an image of the Sun on 18 Nov.). The date of this text is thus emended from May to Dec. (Seeck, *RG* 173 and Barnes, *CE* 71). However, since Helpidius is in Rome, it is unlikely that any ceremonies referred to are connected with Licinius, at a time when the emperors could not agree on the recognition of consuls. Nevertheless, Sirmium in Dec. fits in more easily with Constantine's other movements, although his summer campaign does not rule out his presence at Sirmium in May, if *CTh* 4. 8. 6 is dated to Feb.

CTh 11. 9. 1. No named recipient (governor of Carthaginiensis). *PP*. Castulo, 31 Dec. 323.

324. CRISPUS CAESAR III AND CONSTANTINE CAESAR III CONSULS

CTh 12. 17. 1 (*CJ* 10. 52. 6). Dalmatius. *D.* Sirmium, 19 Jan. 324 (Seeck).

Barnes, *NE* 75 n. 121 suggests 321 as preferable. Dalmatius need not be identified with Constantine's brother (see *ibid.* 105).

CTh 8. 7. 1. Versennius Fortunatus *consularis aquarum*. *D.* Thessalonica, 8 Mar. 324.

Seeck, (*RG* 163) kept the MS date of 315, but the acceptance of the first war between Licinius and Constantine as occurring in 316/17 necessitates emendation (as per *PLRE* i. 371).

CTh 13. 5. 4. Helpidius (vicar of *pp* in Rome). *D.* Thessalonica, 8 Mar. 324.

CTh 2. 17. 1 (*CJ* 2. 44. 2). Verinus, *pu*. *D.* Thessalonica, 9 Apr., *PP.* Rome, 30 June 324 (Seeck).

CTh 14. 4. 2. Lucius Verinus (*pu*). *D.* 11 Apr. 324 (Seeck).

CTh 9. 21. 4 (*CJ* 9. 24. 1. 6–7). Helpidius (vicar of *pp* in Rome). *D.* 4 May 324.

Dated in MSS to 329 and by Seeck (*RG* 176) to 326, but to 324 by Chastagnol (1960: 32 n. 3) and *PLRE* i. 413.

CTh 12. 1. 9 (*CJ* 10. 32. 16). Hilarianus, proconsul of Africa. *PP.* Carthage, 9 July 324.

CTh 2. 24. 1. Verinus (*pu*). *D.* 29 Aug. 324.

For the date, see Chastagnol (1960: 403 n. 1; 1962: 75), *PLRE* i. 951, and Barnes, *NE* 118.

Eus. *VC* 2. 24–42 (*P. Lond.* 878 and A. H. M. Jones 1954; Silli 1987 no. 16). to the provincials of Palestine. Late 324.

Eus. *VC* 2. 23 describes two letters, written in both Greek and Latin versions, sent throughout the provinces, one to the churches and one to the general (pagan) population of the empire. It is the text of the second that he gives here, stating that it derived from his own copy with the imperial signature. It gives an *apologia* for Constantine's success and the provisions for undoing the tyranny of Licinius, and ends with instructions for posting in the eastern provinces. Hall (1998: 97–9) argues that the similarity between the content of the letter here cited in full and the details of Constantine's measures as given at Eus. *VC* 2. 20–1 is not simple repetitiveness on the part of Eusebius, but that *VC* 2. 20–1 represents a summary of the (similar but not identical) letter to the churches, whose text Eusebius does not reproduce.

Eus. *VC* 2. 45. 1 Law banning sacrifice? Late 324.

The existence of this law is controversial, its strongest advocate being Barnes (*CE* 210, 246; 1984; 1989a: 111; see now more recently Bradbury 1994). It is

apparently referred to by Constans in 341 (*CTh* 16. 10. 2), although is not otherwise preserved in *CTh*. The relevant *CJ* title begins with a law of Constantius II (*CJ* 1. 11. 1 = *CTh* 16. 10. 4), but the papyrus index of the first edn. attests the existence of another law immediately before that of Constantius, although only with the fragmentary entry, '[...]odoto' = 'Theodoto' or 'Diodoto' (?) (*P. Oxy.* 1814, line 3). This cannot be matched to the headings of the earlier laws under the equivalent Theodosian title, nor with any appropriate office-holder (unless perhaps a cleric, e.g. Theodotus of Laodicea?). The short space for the entry, however, led the editors of the papyrus to suppose that the emperor's name was abbreviated to *Const.*, meaning Constantius, rather than *Constantin.* for Constantine. It is unlikely that this papyrus index reference is to Constantine's otherwise missing law.

Eus. *VC* 2. 46 (Silli 1987 no. 17). To Eusebius (of Caesarea). Late 324.

This letter is a copy of a circular letter sent to the bishops and encourages the building of churches, stating that instructions have already been sent to the praetorian prefect and governors, telling them to be co-operative (cf. Eus. *VC* 2. 45).

Eus. *VC* 2. 48–60 (Silli 1987 no. 18). To the eastern provinces. Late 324 (325/6 at Barnes 1989a: 111).

Eus. *VC* 2. 47 describes this as a translation of a Latin text in the emperor's own handwriting. The letter, much of which reads like 'a prayer to God' (Barnes, *CE* 210–11), urges, but does not force, the provincials to abandon paganism and adopt Christianity. Errington (1988) argues (*contra* Barnes, *CE* 210) that *VC* 2. 56 relaxes the ban on sacrifice, although sacrifice is not actually mentioned.

CTh 15. 14. 1. Constantius *pp.* *PP.* 16 Dec. 324 (Seeck).

This text rescinds Licinius' enactments.

Eus. *VC* 2. 64–72 (Silli 1987 no. 19). To Arius and Alexander (bishop of Alexandria). Winter 324/5.

Hall (1998: 86–96) argues that Eusebius is either mistaken or deliberately misleading and that this letter was in fact directed to the synod held at Antioch under Hosius in early 325.

Eus. *VC* 4. 9–13 (Silli 1987 no. 34). To Shapur II of Persia. 324/5?

The date of this letter is uncertain, perhaps as early as 324, shortly after the defeat of Licinius (Barnes, *CE* 258–9, 397 n. 144; 1985: 132; or c.325 in Barnes 1989a: 112), although a later date is commonly assumed (330 in Silli 1987: 126).

The letter commends the Christians of Persia to the king's protection. Since most of the documents quoted by Eusebius derive from copies sent to him, or posted near him, the source of this text is uncertain. Barnes suggests that copies were made for distribution (1985: 131), with Eusebius gaining his copy direct

from Constantine, while attending the council of Nicaea in 325 (1989a: 112-13). Warmington (1985) proposes the *notarius* Marianus as the source.

Note

The date attributed to the most famous of medieval forgeries falls within our period. The *Donation of Constantine*, addressed to Pope Sylvester, is given a date which must have been created by someone with genuine if inaccurate knowledge of the consular dates of the early 4th cent. The date is reconstructed as: *Datum Roma sub die tertio Kalendarum Aprilium dom<i>no nostro Flavio Constantino Augusto quater et Gallicano viris clarissimis consulibus* = 30 Mar. 315 or 317 (Fuhrmann 1968: 98).

APPENDIX E

Imperial Plurals

(A) THE IMPERIAL PLURAL

The first person plural used by emperors of themselves predominates throughout our material. This raises two questions. Are the plurals indicative of imperial majesty, or genuine in virtue of imperial collegiality? When is the plural, whether collegiate or majestic, dropped in favour of the singular?

The epistolary plural in Greek is used by Hellenistic kings from the late fourth century onwards.¹ Such plurals, however, do not occur in the Greek letters of Roman magistrates of the Republican period,² nor in those of the early emperors. The singular is still attested as late as the reign of Gordian III.³

In Latin, the use of the first person plural for the first person singular is not uncommon. Studies have been made of the way in which this is employed by both Cicero and Horace.⁴

However, in the imperial constitutions in Latin, use of the singular for sole emperors is usual under the principate. It predominates in the rescripts of Caracalla and Severus Alexander,⁵ with a mixture of singular and plural becoming more common in those of Gordian III,⁶ although it is possible that some of the texts have been altered in the course of compilation and recompilation into the law codes. From the later third century, the plural is standard. But the existence of multiple emperors throughout the tetrarchic period and after makes

¹ See the many examples in Welles (1934), but note that the sing. can be used, though rarely, when denoting the king as an individual rather than a ruler (ibid. 10, n. on line 65 of Doc. 1, a letter of Antigonos Monophthalmos).

² See Reynolds (1982: 23–4), where this difference from the usage of Hellenistic kings is used to identify a letter as emanating from Nicomedes IV of Bithynia rather than from a Roman official.

³ Ibid., docs. 20 and 22. Macro (1976: 173) takes the presence of the pl. as indicating imperial authorship. As a general statement, this cannot be correct. However, the particular document that he is discussing contains a mixture of pl. and sing., so that the pls. are in this case imperial. The anonymous imperial sender of this communication is usually identified as Hadrian (see Abbott and Johnson 1926: 401–3 for text and comments).

⁴ Conway (1899) (Cicero) and Hancock (1925) (Horace).

⁵ Honoré, *EL*³ 44–5; *EL*² 34. Note confusion of number under Alexander at *CJ* 10. 60. 1. Honoré (*EL*³ 114) thinks that the change from plural to singular in two texts from July and Sept. 238 marks the transition from Balbinus and Pupienus to Gordian III.

⁶ Honoré, *EL*¹ 45 n. 189. Zilliacus (1953: 50) doubts that the change can be dated exactly to the reign of Gordian III.

it difficult to be certain whether a majestic plural or a genuine collegiate plural is intended in any particular case. Only with a sole ruler can an imperial plural be demonstrated definitively, a situation that did not occur in our period once Diocletian had first appointed Maximian. The nearest sole ruler is the last of the Constantinian dynasty, Julian. He tends to use the singular in his Greek letters,⁷ but the plural in the Latin laws, for instance with verbs of ordaining.⁸ This should not be regarded as later contamination, since there is confirmation of the use of the plural from contemporary inscriptional evidence.⁹

Constantine himself wrote to his praetorian prefect in 324 as follows: *Remotis Licini tyranni constitutionibus et legibus omnes sciant veteris iuris et statutorum nostrorum observari debere sanctionem*.¹⁰ In the heading to this text, the Theodosian Code gives Constantine's name alone, although there were still three Caesars (Crispus, Constantine II, and Constantius II). This is usual practice in almost all the constitutions throughout the period 313-37. Before 324 Licinius is ignored, as are the Caesars from 317 onwards.¹¹ However, contemporary documentary texts acknowledge all members of the college. Thus, petitions were presented to Constantine and his Caesars¹² and documents went out in all their names.¹³ In the case of the constitution quoted above, the plural could be taken to reflect the collegiality of the Augustus with the Caesars. But of course, neither does the rescission of Licinius' acts here mention his son, the Caesar Licinius Junior, who should also have been included at least nominally. The contrast in this text is, therefore, between the defeated Licinius and the conquering Constantine. The plural *statuta nostra* may well be genuinely imperial.¹⁴

⁷ See Julian, *Ep. ad Ath.*, which uses the sing. throughout (except 270C); but *Ep.* 41 (ed. Wright), the Letter to Bostra, contains a mixture.

⁸ e.g. *CTh* 2. 29. 1, 7. 4-7, 8. 5. 14. On a personal level, Julian refers to Constantine as *patruus meus* (*CTh* 2. 5. 2, 3. 1. 3). The latter text opens with a mixture of numbers: *Patruus mei Constantini constitutionem iubemus aboleri* (cf. the mixture at *CTh* 8. 5. 12: *abduximus; evectioes manu mea perscribas ipse permittam; nostra mansuetudo dabit*). Note that Julian's cousin Constantius II uses a sing. possessive even with the grandiloquent self-appellation *aeternitas mea* (Ammianus 15. 1. 3). A mixture of sing. and pl. is used in Constantius' letter on Flavius Philippus (Oliver and Swift 1962).

⁹ *CTh* 1. 16. 8 = *CIL* 3. 459 and 14198. Note letter 24 (ed. Wright), which is in fact an edict, where the pl. is used here except on one occasion. The edict of Severus Alexander on the crown gold, which uses the sing. throughout, has been attributed incorrectly by some scholars to Julian; e.g. Bruns⁷ no. 96 and Bidez and Cumont (1922), no. 72. For a recent text, commentary, and trans., see Oliver (1978).

¹⁰ *CTh* 15. 14. 1. The MS date is 16 May 324 (*xvii kal. Iun.*), emended by Seeck (*RG* 99, 174) to 16 Dec. (*xvii kal. Ian.*), so as to follow the defeat of Licinius.

¹¹ See further, Ch. 11 Sect. ivc.

¹² e.g. the petition from Orcistus (*FIRA*² i no. 95).

¹³ *FIRA*² i no. 95 and *AE* 1934. 158 (letters); *FIRA*² i no. 96 (private rescript).

¹⁴ It is possible that the later indelibility of the imperial pl. arose simply from a collegiality so continuous that reversion to the sing. in sole reigns did not occur. With the end of collegiality after the extinction of the line of emperors in the west, Zeno and

This rather dubious example is as far as we can go with our material. More interesting are those cases where the plural, whether imperial or collegiate, is discarded in favour of the singular.

(B) THE USE OF THE SINGULAR

When approached individually, the emperors are usually addressed in the second person singular (or by honorific appellations plus *tuus*). This covers a variety of genres of text. Thus, Nemesianus, writing c.284, addresses Carinus: *nuper bella sub Arcto | felici, Carine, manu confeceris*;¹⁵ While the Donatist bishops call upon Constantine in 313: *rogamus te, Constantine optime imperator, quoniam de genere iusto es . . . petimus ut de Gallia nobis iudices dari praecipiat pietas tua*.¹⁶ The tetrarchic panegyrics tend also to use the singular.¹⁷ But both explicit and implicit references to the co-rulers make plurals quite frequent.¹⁸ For instance, Mamertinus uses the plural for the most part in Maximian's birthday panegyric of 291, with a handful of singular references to Maximian only when contrasted with Diocletian.¹⁹

Note, however, that even the emperors addressing petitioners in the private rescripts are not free of inconsistency over number. Sole recipients are addressed in the second person plural²⁰ or even with a mixture of singular and plural.²¹

his successors continue to employ the pl. without exception. Note *iubemus* and *nostrae pietatis* in the earliest example after the death of Nepos, *CJ* 4. 59. 2 (483; for problems over the date, see *CLRE* 501). Note, however, that east-west collegiality is only acknowledged in the inscriptions of *CJ* constitutions up to the death of Anthemius in 472 (e.g. *CJ* 1. 3. 29-34). But note confusion over number in some constitutions of Justinian (Honoré 1975: 117).

¹⁵ *Cynegetica*, lines 69-70.

¹⁶ Optatus 1. 22.

¹⁷ The sing. is normal in *Pan. Lat.* 4(10), 5(8), 6(7), and 12(9) (all to Constantine). In *Pan. Lat.* 7(6), Constantine and Maximian are addressed individually in the sing. and together in the pl. Later in the 4th cent., Pacatus and Mamertinus both use the sing. in their Latin panegyrics to Theodosius and Julian (*Pan. Lat.* 2(12) and 3(11)), as does Libanius in Greek (e.g. *Or.* 13 and 14 to Julian; *Or.* 19 and 30 to Theodosius). Note the curious mixture of *tua* and *vestra* in Symmachus, *Rel.* 21, which is nominally addressed to more than one emperor. He also sometimes uses the sing. to denote the relationship of only one member of the college to other people (e.g. that of Valentinian II to Valentinian I and Gratian, *Rel.* 34. 6; but note the pl. for Valentinian II in relation to Gratian at *Rel.* 4. 1).

¹⁸ A mixture of sing. and pl. is especially prevalent in *Pan. Lat.* 8(5), 10(2), and 11(3).

¹⁹ e.g. *Pan. Lat.* 11(3). 4. 1-2 and 11(3). 7. 1-2. For an apparent contradiction of number, see 11(3). 2. 2 (*gemini vestri natales*) and 11(3). 19. 1 (*gemino natali tuo*). The *geminus* in this panegyric has been taken as denoting a joint birthday of Diocletian and Maximian, which might explain the confusion of number, but the proper reading is probably *genuinus*, to denote Maximian's own true birthday (thus Wistrand 1964, supported by Barnes, *NE* 58 n. 52 based on MS readings provided by C. E. V. Nixon).

²⁰ e.g. *CJ* 2. 26. 4, 3. 32. 17, 4. 21. 8. These may be cases where one petitioner is representing a group or where the names of co-petitioners have been omitted from the inscription.

²¹ e.g. *CJ* 3. 32. 16, 7. 32. 6.

In the imperial constitutions, the plural predominates. In the index to the Theodosian Code, occurrences of *noster* occupy more than twelve columns in comparison with half a column for *meus*.²²

Under Diocletian, the plural is used by the emperors of themselves with a single exception.²³ Constantius I, writing in the name of the entire imperial college, refers to *meus comitatus* and his own name in order to be specific as to which *comitatus* is meant.²⁴ Thus, on rare occasions, the collegiate plural can be dropped when it is necessary to clarify to which of the emperors a passage refers. Constantine refers to his *comitatus* in a similar manner, when writing in the names of himself and Licinius.²⁵ This clarification is not given routinely. The edict of Constantius and Galerius on fiscal debtors refers simply to *comitatus noster*, even though the court of Galerius is probably meant.²⁶ In the Manichees letter, although those punished are ordered to be sent from Africa to *metalla* in the east, their confiscated property is simply to be paid into *fiscus noster*. There is no indication that this money was also to be sent east to Diocletian and was presumably paid to the diocesan *rationalis*. This local financial structure eased the problem of which emperor directly benefited, but in this case any African surplus would presumably have been under the effective control of Maximian.²⁷

The 'edict of Milan' is unique in that both emperors name themselves with emphatic singularity in the text: *Cum feliciter tam ego Constantinus Augustus quam etiam ego Licinius Augustus apud Mediolanum convenissemus*.²⁸ This may have been designed to emphasize the dropping from the college of the defeated but not yet dead Maximinus.

Maximinus himself uses mostly the singular in his letter to Sabinus. Its purpose here is to personalize the emperor's individual position, as he presents an apologia that distances himself from the persecution. For instance, he describes himself in the singular as arriving in the east (*ἐγὼ εὐτυχῶς . . . παρῆγενόμην*) to find a persecution in progress, inherited from Diocletian and Maximian, which he attempted to mitigate.²⁹ Later, he is forced to take anti-Christian measures after being petitioned by Nicomedia and other cities.³⁰ Maximinus thus portrays himself as an individual acting under the pressure of circumstance, with others being ultimately responsible for the persecution. Only

²² Gradenwitz (1925b: 154–5 (*noster*), 138 (*meus*)). Note also the overwhelming preponderance of the pl. (*nos, nobis*) over the sing. (*ego, me, mihi*) in the listing for the 1 pers. pronoun on p. 70. Similar proportions can be observed from the *CJ* index (Mayr 1923).

²³ Diocletian and Galerius are of course portrayed using the sing. in private conversation by Lact. *DMP* 18. 14–15.

²⁴ *Pan. Lat.* 9(4). 14. 1.
²⁵ Augustine, *Ep.* 88. 4 = *C. Cresc.* 3. 70. 81. Note also two occurrences of *ad comitatum meum* in Optatus, *App.* III and V, although the sing. predominates in these letters in any case.

²⁶ *CIL* 3. 12134 line 22.
²⁷ Lact. *DMP* 8. 3 portrays the wealth of Africa and Spain under the rather lax control of Maximian.

²⁸ *Eus. HE* 9. 9a. 2.

²⁹ *Ibid.* 9. 9a. 4–6.

³⁰ *Ibid.* 48. 2.

at the end of the document does he use the plural in giving instructions for the promulgation of the measure.³¹ His final edict of toleration employs the plural throughout.³²

Constantine only uses the singular in a small number of *CTh* texts. One of these examples is in an unusual format, in that it is not a straightforward edict or letter. In his confrontation with the veterans, the emperor is both addressed in the singular and uses it of himself.³³ In the long pronouncement that ends the exchange singular and plural alternate.

In a letter to Petronius Probianus on the property of the condemned, he asks for confiscations to be referred to him: *ad me referri specialiter censeo*.³⁴ Later in the same constitution, he denies to the Caesariani the right to transfer property unless they have rendered their accounts properly: *nisi probata a me purgataque ratiocinia*.³⁵ The use of these singulars may reflect the emperor's desire to keep a close eye on questions of confiscation.

The emperor's personal commitment is more clearly demonstrated in an edict of 325, where not only the singular but the emphatic *ipse* is employed:

*Si quis est . . . qui se in quemcumque iudicum comitum amicorum vel palatinorum meorum aliquid veraciter et manifeste probare posse confidit, quod non integre adque iuste gessisse videatur, intrepidus et securus accedat, interpellet me ipse: ipse audiam omnia, ipse cognoscam et, si fuerit conprobatum, ipse me vindicabo.*³⁶

This personal pledge is further underlined by the emperor's consciousness of his own responsibility: *Ita mihi summa divinitas semper propitia sit et me incolumem praestet, ut cupio, felicissima et florente republica*.

Indeed, it is in texts connected with specifically Christian issues that singulars are most in evidence, as the emperor emphasizes his own religious commitment.

Thus, of the six imperial documents preserved in the appendix to Optatus, five generally use the singular and only one the plural.³⁷ For instance, in the letter to Aelafius, although Constantine refers to *Africa nostra* and *Roma nostra* (perhaps an acknowledgement that all parts of the empire were subject to both emperors), the rest of the letter keeps the singular.³⁸ This is not only in specifying matters brought to Constantine's own attention (*ad scientiam meam; scripta legissem*), but in describing Constantine's relation with God; that he has received his imperial position from God and needs to act suitably in order to continue to receive divine favour:

³¹ Eus. *HE* 9. 9a. 9. ³² *Ibid.* 9. 10. 7-11.

³³ *CTh* 7. 20. 2. *pr.*-2. The veterans mix numbers when they cry out: *dii te nobis servant: vestra salus nostra salus*. Constantine calls the veterans *conveterani mei*.

³⁴ *CTh* 9. 42. 1. 2.

³⁵ *CTh* 9. 42. 1. 4. The presumption is that the property of the Caesariani is largely ill-gotten.

³⁷ Optatus, *App.* III, V, VI, VII and X (sing.), and VIII (pl.).

³⁶ *CTh* 9. 1. 4.

³⁸ *Ibid.* III.

commoveri possit summa divinitas non solum contra humanum genus sed etiam in me ipsum, cuius curae nutu suo caelesti terrena omnia moderanda commisit.

Constantine in another letter tells the Catholic bishops that he is expected (by the Donatists) to act as judge, who will himself undergo judgement: *meum iudicium postulant, qui ipse iudicium Christi expecto*.³⁹ In this letter, *noster* is only used when Constantine identifies himself with his fellow-Christians, in references to *salvator noster* or *deus noster*.

Writing to the Donatist bishops, Constantine refers to official correspondence as *litterae meae*,⁴⁰ but to *iussio nostra* in the letter to Celsus. The rest of the letter to Celsus uses the singular; for instance, in his threat to come to Africa in person, *cum favente pietate divina Africam venero*.⁴¹ Again, the final document in Optatus' dossier also tends to use the singular.⁴² Only in the penultimate text does the plural predominate.⁴³ Similar patterns can be traced in documents from Eusebius.⁴⁴ The use of the singular in texts directed to or concerning Christians is thus unexceptional, indeed usual. The emperors of the period need never be associated automatically with imperial plurals.

³⁹ Ibid. V (cf. Optatus 1. 23).

⁴⁰ Ibid. VI.

⁴¹ Ibid. VII.

⁴² Ibid. X.

⁴³ Ibid. VIII.

⁴⁴ Thus in Eus. *HE* bk. 10, the letters to Miltiades and Caecilian use the sing., the letter to Chrestus uses one sing. and one pl., the second letter to Anullinus uses sing. in the text and pl. in the greeting and farewell, and the first letter to Anullinus uses the pl.

APPENDIX F

Abstract Forms of Address

(A) INTRODUCTION

The use of abstract nouns denoting personal qualities as honorific forms of address is a significant feature of the late empire. Their use is not new in our period, although earlier Latin examples are rare.¹ Evidence of earlier Greek usage is much more plentiful.² But expansion in their use is regarded as one of many features of the increasingly ceremonial aspect of the late empire and of its rhetoric.³ It is, however, only in the fourth century that there is relatively abundant Latin evidence.⁴

Because of the variety occurring in the texts of our period, it seems appropriate to discover which forms of address are most frequent in our material and to whom they are directed.

I have, therefore, set out in Table A below all instances that I can find of such usages in imperial correspondence, not only in the material from 284–324, but also in an extended sample to include examples up to 340. This is in an attempt to compensate for the dearth of imperial letters, and thus these forms of address, for the earlier part of our period. The list gives the reference, name of the recipient of the imperial letter, and the date. Those instances where the letter is not from the emperor, and/or the usage is self-referential, are noted in brackets after the relevant name.

I have also drawn on the evidence of the imperial documents in Greek from Eusebius (with two supplementary examples from other authors). This is given in Table B. It is difficult to be sure in every case which terms in any supposed Latin original the Greek denotes and whether the terms are literal translations or appropriate parallels.⁵

Table C discusses the emperor's epistolary use of *carissime*, which is not

¹ For a rare example, see *D* 40. 12. 27, from the reign of Verus and Marcus.

² The standard work on the Greek aspects of this topic is Zilliaceus (1949). He deals with Greek precedents of 2nd and 3rd cents. AD, mainly from papyri, on pp. 39–50. For an example outside Egypt, from Phrygia, see Frend (1956: 47).

³ MacMullen (1962: 372–3.)

⁴ For a general survey, see Hirschfeld (1913: 674–81).

⁵ A list of poss. equivalents from Greek to Latin is given in Zilliaceus (1949: 105–8) and other possibilities from Latin to Greek occur under the appropriate *Thesaurus Linguae Latinae* entries.

infrequently preserved as an endearment in the greetings, valedictions, and the main text of imperial letters.⁶

The forms of address used denote a notable and laudable quality in the addressee. It is sometimes ambiguous as to whether the words are used as an appellation or with their literal meaning. For instance, the frequent imperial use of *nostra scientia* is ambiguous. Sometimes the emperors appear to mean literally that such and such a matter should be brought to their knowledge, but elsewhere the usage seems designed to highlight an imperial quality, when some matter is referred 'to Our Wisdom'.⁷ In one case listed in Table A *scientia* may be used of a prefect as an appellation. Note also that *indulgentia* at this period tends to denote a specific imperial act, rather than an abstract quality, and thus represents a development in the opposite direction from that which we encounter with some of our other terms.⁸

I do not discuss imperial self-references to their own qualities, such as *benevolentia*, *clementia*, *humanitas*, *innocentia*, *mansuetudo*, *pietas*, *serenitas*, and *tranquillitas*, nor the continuing stress upon the emperor's *providentia*.⁹ The importance of these terms, however, should be apparent from their occurrence in many of the items in both the letter and edict catalogues.

The terms used may be divided into two types: first, those that denote an inherent quality in the addressee befitting his high rank; secondly, those which emphasize qualities appropriate to him as an office holder and subordinate.

(B) TERMS OF RANK

Gravitas is the most frequently used term. It is the earliest attested of all titles in our period,¹⁰ and goes back at least to the second century AD.¹¹ It represents

⁶ For a rarely preserved early 4th-cent. example of epistolary endearment between senators, note Dictys Cretensis, *Epistula Septimii*, with the use of *mi Rufine* by the otherwise unknown senator L. Septimius addressing Aradius Rufinus, probably the consul of 311 and urban prefect in 312-13 (Chastagnol 1962: 62).

⁷ On *nostra scientia* as an element in the *Selbsttitulatur* of emperors in the late empire, see Honig (1960: 122-6). Note especially the list on p. 126, where he gives his own interpretations compared to those of Gothofredus's *CTh* (with an alternation between upper and lower case for *N/nostra S/scientia*) and Pharr's trans. Pharr talks variously of the imperial quality 'Our Wisdom' and of the literal transfer of information, for matters simply brought to 'our knowledge'. Honig's own list differentiates four uses: three categories (*a*, *c*, and *d*) covering uses of *nostra scientia* as self-titulature (or here *Selbstpersonifizierung*) for the imperial quality of 'Our Insight' (*Einsichtsvermögen*) and one as a literal use for bringing something to the emperor's attention (*die bloße Kenntnisnahme*).

⁸ *Indulgentia* has already been discussed in Ch. 3 Sect. iii.
⁹ Some of these terms are included in Honig (1960). More recently see the tabulation of earlier instances in Wallace-Hadrill (1981). For examples of unofficial tetrarchic qualities on dedications, see the list in Scheithauer (1988: 173-4). The standard work on imperial *providentia* is still Charlesworth (1936).

¹⁰ *CJ* 10. 10. 1 (293).
¹¹ It is used by Marcus and Verus of two magistrates, Proculus and Munatius (*D* 40. 12. 27). For the identity of Munatius, see *Prosopographia Imperii Romani*, 2nd edn., v. 314, no. 717. Note also that it is used of the Senate in a fictional context at Ps.-Quintilian, *Declamatio* 4. 13.

a quality much prized since republican times, with a sense of the inherent moral worth of those of high rank, their seriousness and reliability.¹² We also find it used in private rescripts in the third person, when a governor is said to act *pro sua gravitate*, a statement that should be reassuring to the petitioner.¹³ And it can be used to denote the expected quality in soldiers as *militaris gravitas*.¹⁴

Not only is *gravitas* the most commonly used form of address, but it occurs for the widest variety of office-holders. Thus the list is divided into four categories. The first two are the highest-ranking offices, the praetorian and urban prefectures, for which the address is only attested after the fall of Licinius. *Gravitas* may however be in use for at least praetorian prefects from a few years earlier, if the Eusebian *σβαρότης* addressed to the praetorian prefect Sabinus in 312 is its Greek translation.¹⁵ The third category is that of vicars. The list requires some prosopographical explanation, which is given in the note at the end of Table A. The final group comprises miscellaneous persons from the proconsul of Africa to *praesides*, financial officials, and even bishops and decurions. Not listed are some additional examples of the term in non-imperial correspondence, for instance in the contemporary letters of bishops.¹⁶

Two terms in Eusebius appear to serve as equivalents to *gravitas*: *σβαρότης* (already mentioned) and *στερρότης*.¹⁷ It is not clear whether Eusebius is translating different Latin terms or rather creating a deliberate dichotomy within the *Ecclesiastical History* by using the first of Maximinus' prefect and the second of various bishops.¹⁸

¹² On the use of *gravitas*, mainly drawing on Cicero, see Lévy (1965: 48–63, esp. 52–3 nn. 188–96) for its use in connection with those of high rank. Note also Nazarius' description of Constantine's face 'augusti decoris gravitate' (*Pan. Lat.* 4(10). 34. 4).

¹³ *CJ* 2. 3. 18 (287), 2. 26. 4 (286). Cf. *pro sua aequitate*, *FV* 30 (271); *pro sua auctoritate atque experientia*, *FV* 271 (286); *pro experientia sua*, *FV* 274 (315); *intercessu auctoritatis suae*, *FV* 279 (286). *Experientia* is listed in Table A as a rare term. Note also a poss. use of *sua benevolentia* in the Currency Decree, though the text is too fragmentary to be sure to whom the quality refers and how the grammatical sense would be reconstructed (letter catalogue, no. 36).

¹⁴ Trans. as 'Ta Gravité' (ed. and trans. Bardy, *Sources Chrétiennes*, 55), 'Your Firmness' (Loeb, ed. Oulton), and 'Your Steadfastness' (Penguin, ed. Williamson, rev. 1989).

¹⁵ e.g. the letters of Purpurius of Limata in Optatus, *App.* I (ed. Ziwsa, 190–1).

¹⁷ The first is that accepted by *Thesaurus Linguae Latinae*, 2307. The two Eng. trans. cited above (Loeb and Penguin) each render both words by the same term, 'Firmness' and 'Steadfastness' resp. The French trans. renders the first term as 'Gravité' and the second as 'Fermeté'; cf. Dinneen (1929: 102), 'constancy'. Zilliacus (1949: 107) equates *στερρότης* with *sollicitudo* (5th–6th cents.) and does not cite *σβαρότης* at all.

¹⁸ The adjective *στερρός* with *ψυχή* and *βίος* is used with moral approval at *VC* 2. 29. 3 and *Praep. Ev.* 15. 13. 9 resp. Eusebius does not direct any specific criticism against Sabinus and no information as to the prefect's fate is given in the account of the destruction of the persecuting supporters of Maximinus. The contrast, if any, might not be between titles used in the pronouncements issued under Maximinus as opposed to under Constantine, but between a state official and Christian bishops (who are accorded this title elsewhere in patristic epistolography; see Dinneen 1929: 102).

The frequency of *gravitas* declines after our sample period, though it is still quite common.¹⁹

The other terms of rank are less frequent. For instance, *sublimitas*, which is only used of the higher ranks, such as praetorian and urban prefects, is most frequently used after our period.²⁰

Some terms are used in contexts where they appear specifically appropriate. Thus both *prudencia*²¹ and *sollertia*²² are suitable for judges. In writing about the Manichees to the proconsul of Africa, Diocletian uses first *sollertia* and then *prudencia* to refer to the governor's original letter setting out the details of the Manichee problem: *sollertia tua serenitati nostrae retulit* and *pandit prudencia tua in relatione*. But when it comes to enforcing the emperor's decision, a different term denoting obedience and compliance is appropriate: *devotio tua iussis ac statutis tranquillitatis nostrae maturet obsecundare*. It is possible to argue that in this letter at least, the choice of appellation is deliberate and not simply to provide rhetorical variety.²³

The terms in Eusebius alter the balance of some of the rarer Latin titles. Although it is difficult to be certain, ἀγγίνοια may translate *sollertia* and σύνεσις *prudencia*.²⁴ ἐπιμέλεια is possibly the translation for *sollicitudo*, being used as such in Eusebius' version of the 'edict of Milan'.²⁵ Nearly all Eusebius' uses of these are in translations of imperial letters to bishops.

The use of the term *sanctitas* for the Senate is an odd and isolated example in the material. I feel rather suspicious of its authenticity in this context. Eusebius certainly uses the Greek equivalent, but always in the emperor's letters to Christians.²⁶

(C) TERMS OF SUBORDINATION

The second most commonly used term is *dicatio*. It is mostly confined to our period.²⁷ It is the only term where we know how Eusebius translates it,

¹⁹ See *CTh* index list in Gradenwitz (1925b: 94).

²⁰ *Ibid.* 240.

²¹ Cf. *CJ* 1. 51. 1 (*prudencia* of gubernatorial assessors), and *prudencia tua* of Constantine (*Pan. Lat.* 4(10). 9. 3, 4(10). 10. 2) and of Lollianus (Firmicus Maternus, *Mathesis* 1. pr. 8). The learned jurists are of course called *prudentes* (e.g. *CTh* 1. 4. 1) or individually *vir prudentissimus*, as are each of Papinian, Paul, and Ulpian (*CJ* 5. 71. 14, 9. 22. 11, 9. 41. 11).

²² Cf. *CJ* 5. 74. 1: *quod praesidis provisione fieri convenit, cuius sollertiae congruum est*.

²³ *Coll.* 15. 3; cf. Skeat (1964: p. xxxviii).

²⁴ Neither of these equivalents is noted in the list of Zilliacus (1949: 105–7). For the Greek terms in patristic epistolography, see Dinneen (1929: 20, 58).

²⁵ The equivalence of these two terms is accepted by Zilliacus (1949: 106). ἐπιμέλεια is widely used of the imperial procurator in the Beatty Panopolis Papyri (e.g. 1. 72, 76, 85, 103, 155, 158, 171, 2. 66–7).

²⁶ See Dinneen (1929: 10–11) and Zilliacus (1949: 73) for its use in patristic epistolography (most commonly to bishops).

²⁷ Gradenwitz (1925b: 61) (four of five *CTh* instances occur in our sample period).

although he is not entirely consistent. In his version of the 'edict of Milan', he uses the term *καθοστώσις* three times; once to translate *dicatio*, once to translate *officium*, and once to translate *officium*, but where he does not translate *dicatio* in the same sentence. *Officium* means literally 'office' in this context, but Eusebius seems to regard it as a title. However, despite this confusion, Eusebius' usual practice seems clarified by the only other passage where we have Latin and Greek versions preserved. In his version of Maximinus' letter to Tyre, Eusebius uses *καθοστώσις*, where the inscribed copy from Colbasa uses *dicatio*. However, though we may assert that Eusebius uses *καθοστώσις* to translate *dicatio*, we cannot be certain that he is not using it to translate other words as well.²⁸ It is possible that some of his usages refer to *devotio*, our third most common title. This is a term very similar to *dicatio* in meaning, though it acquires a more pietistic flavour in later periods, where, unlike *dicatio*, it is more frequently used.²⁹ The two terms occur together in three of our texts. These two terms plus the Greek equivalent are used of all ranks. The title is one that puts the addressee in a position of subordination, normally to the emperor. It is a quality of loyal soldiery³⁰ and indeed of all the emperors' subjects.³¹ In his letter to Miltiades, Constantine even uses it of himself, as owing duty to God. Both Sabinus and Anullinus are addressed by it and use it of themselves, the first writing to a lower official, and the second back to the emperor. It is also used in non-imperial contexts by a lower rank to a higher.³²

A number of usages of these two terms are self-referential. But there are other much more self-deprecating terms that can be employed.³³ Thus *parvitas* is used of themselves by Anullinus and Porphyrius Optatianus writing to the emperor,³⁴ and *mediocritas* by Firmicus Maternus and the Donatist bishops in non-imperial contexts.³⁵ Abstract terms of address are not confined to use by emperors or in imperial contexts.

²⁸ *Thesaurus Linguae Latinae*, 878, 958 supposes that both *dicatio* and *devotio* are denoted by the same Greek equivalent.

²⁹ See the *CTh* index list in Gradenwitz (1925b: 61).

³⁰ Thus Diocletian refers to *fidam devotionem militum nostrorum* (*CJ* 7. 64. 9), and Licinius to the soldiers' *devotione ac laboribus* (*FIRA*² i no. 93 line 5).

³¹ *PE pr.* 146; cf. *P. Cairo Isid.* 1. 13 (in Greek). Note also Optatus, *App.* 2 (ed. Ziwsa, 198): *Gallienus duovir dixit: ... vides enim iussionem esse sacram. Caecilianus dixit: devotus sum tanto praecepto.*

³² See *P. Abin.* 63. 3, 13, 25: an advocate addressing the *iuridicus* of Alexandria in 350.

³³ For Greek examples, see Dinneen (1929: 78–80).

³⁴ Augustine, *Ep.* 88. 2 and *Epistula Optatiani* 2.

³⁵ Firmicus Maternus, *Mathesis* 5. 1. 38 and 7. 26. 12 (the dedicatee of his work was consul designate for 338) and Optatus, *App.* IIII. The Greek equivalent is very common; e.g. *P. Beatty Panop.* 1. 69, 106, 145, 154, 173, 192, 195; 2. 96, 104, 133; *P. Oxy.* 3758 lines 81, 123, 210; and *P. Oxy.* 3759 line 41.

TABLE A. Latin Terms of Address

Ref.	Name	Year
<i>DEVOTIO</i>		
<i>Coll.</i> 15. 3. 8	Julianus, proconsul of Africa	302
<i>FIRA</i> ² i no. 93	Dalmatius	311
Augustine, <i>Ep.</i> 88. 2	Anullinus, proconsul of Africa (self-reference)	313
<i>CTh</i> 10. 11. 1	<i>Rationales</i> of Spain ^a	317
<i>CTh</i> 7. 20. 1	Florianus <i>praeses</i>	324?
<i>CTh</i> 7. 22. 2	Severus, vicar of Italy	318?
<i>DICATIO</i>		
<i>FIRA</i> ² i no. 93	Dalmatius	311
AE 1988. 1046	citizens of Colbasa	312
<i>Epistula Constantini</i>	Porphyrius Optatianus	312/26
Augustine, <i>Ep.</i> 88. 2	Anullinus, proconsul of Africa (self-reference)	313
Lact. <i>DMP</i> 48. 4. 6	<i>Praeses</i> of Bithynia	313
<i>CTh</i> 11. 30. 1	Claudius Plotianus, <i>corrector</i> of Lucania and Bruttium	314
Optatus, <i>App.</i> III ^b	Aelafius, vicar of Africa	314
<i>CTh</i> 7. 20. 1	Florianus <i>praeses</i>	324
<i>CTh</i> 11. 30. 21	Proculus, proconsul of Africa	340
AE 1991. 1602	<i>praeses</i> of Crete?	4th C.
<i>EXPERIENTIA</i>		
<i>CJ</i> 3. 12. 1	Verinus, <i>praeses</i> of Syria	305
<i>CTh</i> 3. 32. 2	Julianus, <i>pu</i> ?	326?
<i>GRAVITAS</i>		
<i>Praefecti Urbi</i>		
<i>CTh</i> 2. 17. 1, 14. 4. 2	Lucius Verinus	324
<i>CTh</i> 11. 30. 13, 18	Anicius Julianus	326/9

^a The sing. *tua* is used of the *rationales* of Spain, in relation to both *devotio* and *gravitas*. This may reflect the fact that each *rationalis* receives a copy of a standard letter. Alternatively, the heading may be an error for the diocesan *rationalis* alone (as suggested by Delmaire 1989a: 181 n. 30).

^b *Dictatio* appears in the letter to Aelafius in the standard edn. of Optatus (*CSEL* 26, ed. K. Ziwsa), but this is almost certainly an error. See C. H. Turner (1926: 287).

Praefecti praetorio

<i>CTh</i> 1. 5. 1	Constantius	325
<i>CTh</i> 1. 16. 4	Maximus	328
<i>CTh</i> 14. 8. 1	Evagrius	329
<i>CTh</i> 7. 22. 5, <i>Sirm.</i> 1	Ablabius	333
<i>CJ</i> 4. 62. 4	Felix	336
<i>CTh</i> 8. 5. 3	Acyndinus	339

Vicarij^c

<i>CJ</i> 5. 73. 4	Alexander	303
Optatus, <i>App.</i> III	Aelafius	314
Optatus, <i>App.</i> VII	Celsus	315
<i>CTh</i> 6. 35. 4	Julius Verus (Severus)	318/321?
<i>FIRA</i> ² i no. 95	Ablabius	324/6
<i>CTh</i> 1. 15. 1	Silvius Paulus	325

Other Addressees

<i>CJ</i> 10. 10. 1	Scyrio <i>rationalis</i>	293
<i>CJ</i> 3. 3. 3	Serapion	300
<i>CTh</i> 16. 2. 1	Anullinus, proconsul of Africa?	313
<i>CTh</i> 1. 2. 1	Antiochus <i>praefectus vigilum</i>	314
<i>CTh</i> 10. 11. 1	<i>Rationales</i> of Spain ^o	317
<i>CTh</i> 2. 6. 2	Felix <i>praeses</i> of Corsica	318
Optatus, <i>App.</i> X	Numidian bishops	330
<i>CTh</i> 12. 1. 29	<i>ordo</i> of Cirta	340

PRUDENTIA

<i>Coll.</i> 15. 3. 5	Julianus, proconsul of Africa	302
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SANCTITAS

<i>CTh</i> 15. 34. 4	the Senate	313
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SCIENTIA

<i>CTh</i> 14. 4. 2	Lucius Verinus	324
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SINCERITAS

<i>CTh</i> 9. 40. 3	Festus, <i>praeses</i> of Sardinia	319
Optatus, <i>App.</i> VIII	Catholic bishops and people of Africa	321
<i>FIRA</i> ² i no. 95	Ablabius	324/6

^c See note at the end of this table, for justification of the names included in this list of vicars.

SOLLERTIA

<i>Coll.</i> 15. 3. 4	Julianus, proconsul of Africa	302
Optatus, <i>App.</i> III	Aelafius, vicar of Africa	314
Optatus, <i>App.</i> VIII	Celsus, vicar of Africa (letter of prefects)	315
<i>CTh</i> 8. 1. 3	Maximus, praetorian prefect	333

SOLLICITUDO

Lact., <i>DMP</i> 48. 5	<i>praeses</i> of Bithynia	313
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SUBLIMITAS

<i>CTh</i> 12. 1. 4	Octavianus, <i>comes</i> of the Spains	317
<i>CTh</i> 11. 30. 11	Maximus, urban prefect	321
<i>CTh</i> 1. 5. 3	Bassus, praetorian prefect	331
<i>CTh</i> 8. 1. 2	?	331?
<i>CTh</i> 13. 4. 1, <i>Sirm.</i> 4	Felix, praetorian prefect	334/6
<i>CTh</i> 12. 1. 33	Rufinus, <i>comes Orientis</i>	342

Note on the prosopography of vicarii

The following notes explain the reasons for the inclusion of the names in the list of *vicarii* addressed as *gravitas tua*.

- (1) I have chosen to identify Alexander with the vicar of Africa and later usurper; see letter catalogue, no. 39.
- (2) Aelafius is undoubtedly vicar of Africa, but his name has caused problems. He has been identified implausibly with Ablabius^d and the name has more convincingly been taken to be a corruption of that of his supposed successor, Aelius Paulinus.^e It may however be genuine nomenclature. The similar name Elaph(f)ius occurs in the 5th cent.^f
- (3) Celsus is uncontroversial.^g
- (4) Julius Verus may rather be Julius Severus with his vicariate dated to 318.^h
- (5) As the recipient of a letter that forms part of the Orcistus dossier, Ablabius has been taken as being praetorian prefect, which would date the letter to c.330.ⁱ This would mean that a petition from a Christian village, presented via the vicar in the aftermath of the conquest of the east from Licinius (and

^d An idea dismissed by Baynes (1972: 76).

^e Barnes, *NE* 145 n. 18. For bibliography on the Aelafius question, see Mazzucco (1993: 50–4).

^f *PLRE* ii. 387 (Elaphius 1 and 3, Elafius 2).

^g Evidence listed in Barnes, *NE* 146.

^h *PLRE* i. 836 (Severus 25) and Barnes, *NE* 144.

ⁱ Chastagnol (1981a: 393–8; 1981b: 373).

before the death of Crispus in 326), remained unanswered by Constantine for about five years. Such a gap would render the emperor's words rather too self-conscious, when he speaks of the grant of civic status *promptissime pro tempo[ri]s nostri dignitate conces[sim]us* and asks that implementation be effected *festinanter*.¹ Further, the favourable response is described in the letter as follows: *Proinde [gra]vitat[is] tuae interces[sione] quae fuerant mu[t]ilata ad integrum prisci [honoris re]duci sancimus*.² This mirrors the phrase from the accompanying fragmentary document: *Proinde vicari intercessione qua[e] fuerant mu[t]ilata ad integrum prisci honoris r[educit imp(erator?) super omnes retr]o plus*.³ If this other document is a letter of Ablabius to Orcistus, as often supposed, he cannot be the vicar mentioned, since he would otherwise be referring to himself. But the almost identical wording in the two texts, which occurs also immediately before and after the extracts given here, makes it unlikely that the unidentified document is that of an official making an exact copy of the imperial phraseology. I prefer to accept Turpin's suggestion that this is the *adnotatio* from the emperor himself, which is mentioned in the letter.⁴ Thus Ablabius is here addressed as vicar of Asiana.⁵

(6) Silvius Paulus is addressed as *mag(ister?) Italiae*, which is taken to denote a form of vicariate.⁶

¹ *FIRA*² i no. 95 col. 2 lines 12–15. For other edns. of this inscription, see Ch. 1 n. 84.

² *Ibid.* lines 2–6.

³ *Ibid.* col. 1 lines 3–4. If this document originated from the emperor the restoration should rather be *reduxi[m]us*, *reduci sancimus*, or some other verb with the emperor as subject, though it is still difficult to interpret the letters *P³OPIVS* that should end the phrase.*

⁴ Turpin (1988: 300–2). The *adnotatio* is referred to at *FIRA*² i no. 95 col. 2 line 45.

⁵ Ablabius is given as vicar by *PLRE* i. 3 and Barnes, *NE* 142. For Ablabius as a possible vicar in Italy five years earlier, see Corcoran (1993: 105 n. 44), and App. D above.

⁶ *PLRE* i. 685 (Paulus 10).

TABLE B. Terms of Address in Eusebius

ΑΓΧΙΝΟΙΑ

HE 9. 1. 5	<i>praeses?</i> (letter of prefect)	311
VC 3. 18. 4, 3. 19. 1	the churches	325
VC 4. 35. 3	Eusebius of Caesarea	325
Athanasius, <i>De Decretis</i>	Theodotus of Laodicea	325
<i>Nicaenae Synodi</i> 42		
VC 3. 31. 1, 2	Macarius of Jerusalem	326
VC 3. 52	Macarius and the bishops of Palestine	330/r

ΕΠΙΜΕΛΕΙΑ

HE 10. 5. 7	<i>praeses</i> (of Palestine?)	313
VC 4. 36. 3	Eusebius of Caesarea	333

ΕΠΙΣΤΡΕΦΕΙΑ

HE 9. 1. 6	<i>praeses?</i> (letter of prefect)	311
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ΚΑΘΟΣΙΩΝΙΣ

HE 9. 1. 5	Sabinus, praetorian prefect (self-reference)	311
HE 9. 7. 13	citizens of Tyre	312
HE 9. 9a. 7, 9	Sabinus, praetorian prefect	312
HE 10. 5. 6, 8, 9	<i>praeses</i> (of Palestine?)	313
HE 10. 5. 17	Anullinus, proconsul of Africa	313
HE 10. 5. 18	Constantine (self-reference)	313

ΟΞΙΟΤΗΣ

VC 2. 46. 3	Eusebius of Caesarea	325
VC 3. 18. 6	the churches	325
VC 3. 32. 2	Macarius of Jerusalem	326
VC 4. 42. 5	Synod at Tyre	335

ΣΤΕΡΡΟΤΗΣ

HE 10. 5. 20	Miltiades of Rome and Marcus	313
HE 10. 5. 24	Chrestus of Syracuse	314
HE 10. 6. 1, 3	Caecilian of Carthage	313
Socrates, HE 1. 25	Arius	333

ΣΤΙΒΑΡΟΤΗΣ

<i>HE</i> 9. 9a. 1, 7	Sabinus, praetorian prefect	311
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ΣΥΝΕΙΣ

<i>VC</i> 3. 19. 1	the churches	325
<i>VC</i> 3. 61. 1, 2, 3	Eusebius of Caesarea	330/1
<i>VC</i> 3. 62. 1	bishops at Antioch	330/1
<i>VC</i> 4. 36. 2	Eusebius of Caesarea	333

TABLE C. Use of *carissime*

PLRE i assumes that persons addressed as *carissime* by the emperors must be of senatorial rank.^a It is not clear why this should be so. The list below gives instances of the use of the term in our period. There are certainly equestrian recipients here. The clearest example is Eumenius, holding a post as a *trecenarius*, but some of the *praesides* may also be equestrian (e.g. Agatho, Crispinus, Lepidus, or Dalmatius). *PLRE* i. 3 and 331 supposes that Felix and Ablabius, even before becoming praetorian prefect, were already of senatorial rank. There is no reason to think that this was so. It is true that the praetorian prefecture seems to carry the rank of *clarissimus* at some point after the fall of Licinius, being first attested in 331. Ablabius therefore probably gained his senatorial status from his appointment to the prefecture (rather than on holding the consulship in 331 as happened with earlier prefects). But, as argued in the note at the end of Table A above, I take the letter he receives on the Orcistus matter as directed to him while holding office as *vicarius* of Asiana, and it is too early for the vicariate to carry senatorial rank. Thus he is addressed as *carissime et iucundissime* while still of equestrian rank.

Carissime is frequently joined with other endearments. With *iucundissime* it is found in the 2nd cent., and continues long after our period.^b With *amantissime*, it is also much used later, often with *parens* as in the example of the letter to Ablabius in 333.^c

In imperial letters, Eusebius uses *τιμιώτατε* for *carissime*^d and also *ἀγαπητέ*, which could be a trans. of *carissime* or *dilectissime*.^e Constantine, however, does not appear to use *dilectissime*, though it does occur in the letter of the Donatist bishops to Pope Sylvester.^f

Key: G = in greeting; T = in main text; F = in farewell.

Ref.	Name	Year
<i>Coll.</i> 1. 10	Agatho (G)	290
<i>CJ</i> 9. 2. 11	Crispinus, <i>praeses</i> of Phoenice (G)	292
<i>Pan. Lat.</i> 9(4). 14. 5	Eumenius, <i>magister memoriae</i> (F)	297
<i>Coll.</i> 15. 3	Julianus, proconsul of Africa (T)	302
<i>FIRA</i> ² i no. 92	Lepidus (<i>praeses</i> of Pisidia?) (T)	Late 3rd C.?
<i>CJ</i> 3. 12. 1	Verinus (<i>praeses</i> of Syria?) (T)	305

^a Thus *PLRE* i. 28 (Agatho) and 232 (Crispinus 2).

^b Used by Marcus Aurelius as Caesar to Fronto in the 140s (Fronto, *Ep. ad M. Caes.* 3. 5) and in imperial letters of late 4th cent. (*Coll. Avell.* 4. 2, 5. 1, 9. 1, 12. 3).

^c *Coll. Avell.* 33. 3 (419).

^d Eus. *HE* 10. 5. 15, 17, 20, and 10. 7. 1, 2.

^e e.g. Eus. *VC* 2. 46. 3, 3. 20. 2, 3. 32. 2, 3. 53. 4. For Greek and Latin equivalents, see *Coll. Avell.* 72, 78 (*carissime*), and 76 (*dilectissime*).

^f Optatus, *App.* IIII.

<i>FIRA</i> ² i no. 93	Dalmatius (<i>praeses</i> of Valeria?) (G, T, F)	311
<i>FV</i> 35	Praetorian Prefect (T) <i>parens c. et amantissime</i>	313?
Optatus, <i>App.</i> V	bishops at Arles (G, T, F)	314
<i>ILAfr</i> 269	Catullinus (<i>proconsul Africae</i>) (G, F)	317/19?
Optatus, <i>App.</i> VIII	Catholic bishops and people of Africa (F)	321
<i>FV</i> 249	Maximus <i>pu</i> (T) <i>et iucundissime</i>	323
<i>FIRA</i> ² i no. 95	Ablabius (vicar of Asiana) (G, T, F) <i>et iucundissime</i>	324/6
<i>CTh</i> 7. 4. 1, 15. 1. 4	Felix (later <i>ppo</i> ?) (G)	320/6
<i>Sirm.</i> 1	Ablabius <i>ppo</i> (T) <i>parens c. et amantissime</i>	333
<i>Sirm.</i> 4	Felix <i>ppo</i> (T) <i>parens</i>	336

APPENDIX G

References to the Governor in Private Rescripts (284-324)

cf. Honoré, *EL*² 39-40.

(1) USE OF *PRAESES* (*PROVINCIAE*)

CJ	2.3.17	4.8.1	5.18.6	7.4.11	8.13.12	9.20.8
	2.4.32	4.9.1	5.34.5	7.13.1	8.23.2	9.35.6
	2.12.19	4.10.7	5.34.6	7.14.4	8.24.2	9.42.1
	2.19.7	4.13.2	5.34.7	7.14.5	8.25.9	9.47.15
	2.20.4	4.14.6	5.37.15	7.14.9	8.27.14	9.51.10
	2.21.4	4.19.9	5.42.4	7.16.11	8.30.3	10.32.4
	2.23.2	4.22.2	5.51.6	7.16.15	8.34.2	10.32.10
	2.26.4	4.23.1	5.56.4	7.16.19	8.38.3	10.32.13
	2.26.5	4.23.2	5.62.22	7.19.5	8.40.22	10.33.1
	2.42.3	4.30.9	5.71.9	7.19.6	8.44.16	10.33.2
	2.42.4	4.31.10	5.71.10	7.21.7	8.44.17	10.41.3
	2.46.2	4.37.3	5.71.13	7.32.5	8.44.21	10.43.3
	3.29.4	4.44.5	5.71.14	7.32.6	8.46.9	10.43.4
	3.29.6	4.46.2	5.71.16	7.33.3	8.47.2	10.50.3
	3.32.15	4.49.4	5.71.17	7.43.8	8.47.4	11.37.2
	3.32.17	4.49.5	5.72.3	7.45.7	8.50.5	11.38.1
	3.34.9	4.49.8	5.74.1	7.53.7	8.50.6	11.42.1
	3.34.10	4.49.10	5.74.2	7.60.2	8.50.8	FV 271
	3.36.14	4.64.5	6.2.10	7.62.5	8.50.9	277
	3.36.18	4.65.17	6.2.13	7.62.7	8.53.8	279
	3.37.5	4.65.18	6.6.7	7.64.8	8.53.9	280
	3.41.3	4.65.26	6.20.8	7.71.4	9.1.12	281
	3.41.4	4.65.29	6.20.14	7.75.3	9.1.14	282
	3.42.9	5.12.12	6.24.7	8.8.2	9.9.23	293
	4.1.5	5.16.16	6.59.2	8.10.5	9.12.3	312
	4.1.6	5.17.3	7.2.12	8.13.11	9.12.4	326
	Cons. 6.15	Cons. 9.9	CGV 3.7.2	[FV 291(?)]	CIL 3.578(?)	

(2) USE OF *PRAESIDALIS*

CJ	4.9.4	4.24.11	5.71.12	6.1.2	7.16.13	7.39.1
	8.13.20	9.1.17	9.1.18	9.35.5		

(3) USE OF RECTOR (PROVINCIAE)

<i>CJ</i>	1.18.6	4.6.9	6.2.11	7.62.8	8.14.5	11.30.4
	2.3.18	4.19.11	6.30.6	7.72.9	8.39.1	<i>Coll.</i> 10.3
	2.4.28	4.34.9	6.30.9	8.2.2	8.46.5	<i>Coll.</i> 10.4
	2.4.33	4.50.5	6.32.3	8.6.1	9.20.12	<i>Coll.</i> 10.5
	2.42.4	4.51.5	7.14.5	8.8.3	9.22.10	<i>Cons.</i> 2.6
	3.38.5	5.4.11	7.16.8	8.13.10	9.22.17	<i>Cons.</i> 9.19
	4.5.6	5.51.7	7.48.3	8.13.26	10.51.3	<i>CGV</i> 3.6.5
	<i>FV</i> 284	<i>FV</i> 287	<i>Chr.</i> ii no. 380		<i>Cons.</i> 9.5 (365)	

(4) USE OF IUDEx

(a) *Iudex* alone

<i>CJ</i>	2.53.3	4.1.3	4.49.13	7.45.7	8.44.24
	3.32.10	4.21.8	5.53.5	7.45.11	9.2.10
	3.36.16	4.44.2	7.39.1	7.64.7	<i>Cons.</i> 5.7

(b) *Iudex competens*

<i>CJ</i>	4.6.5	4.50.7	5.18.9	5.58.3	7.72.5	<i>FV</i> 33
	4.7.3	4.65.22	5.24.1	6.39.3	7.72.9	<i>Cons.</i> 5.7
	4.19.18	4.65.27	5.28.6	7.20.1	9.33.4	
	4.32.19	5.5.2	5.28.7	7.21.7	<i>FV</i> 32	

(c) *Iudex datus*: *CJ* 1. 22. 2, 7. 48. 3(d) *Pedanei iudices*: *CJ* 9. 22. 11(5) SOME PERIPHRASES FOR *PRÆSES* OR *IUDEx*

- (a) *is cui a nostro rescripto cognitio delata est*: *CJ* 1. 22. 1
 (b) *apud eum cuius super ea re notio est*: *CJ* 4. 12. 4, 4. 37. 5, *FV* 313
 (c) *ab eo qui pronuntiaverat*: *CJ* 7. 45. 9
 (d) *qui provinciam regit*: *CJ* 7. 39. 1

(6) *MODERATOR PROVINCIAE*: *CJ* 5. 17. 3(7) *MAGISTRATUS*: *CJ* 5. 34. 6

(8) OFFICIALS OF KNOWN SENATORIAL RANK

- (a) *corrector vir clarissimus amicus noster*: *CJ* 1. 18. 4, *FV* 292
 (b) *Aelius Dionysius vir clarissimus amicus noster (proconsul Africae)*:
FV 41
v.c. proconsul provinciae Africae amicus noster (Aristobulus): *CHV* 2. 1

vir clarissimus proconsul: Collectio 245

vir clarissimus proconsul Africae amicus noster: Cons. 9. 6 (364)

- (c) *Vettius Rufinus clarissimus vir praefectus urbi amicus noster: FV 273*
vir clarissimus praefectus urbi amicus noster (Rufius Volusianus): FV 274
Maximus [v.c.]? (pu 319-23?): FV 113
- (d) *praetor: CJ 5. 51. 9, 5. 62. 23, 8. 47. 2*
- (e) *Iulius Menophilus spe[ctabilis vir?]: FV 20 (?)*

(9) PRAETORIAN PREFECT: *CJ 1. 19. 1, 7. 35. 2*

(10) RATIONALIS: *CJ 2. 36. 3, 4. 12. 2, 10. 2. 3, 10. 3. 4*

(11) PROCURATOR: *CJ 3. 34. 7*

APPENDIX H

Constitutions Attributed to Junior Rulers

Given here is a summary of the attribution of constitutions to tetrarchs other than the seniors, based on the discussion in Ch. 11.

MAXIMIAN AS CAESAR (285-6)

Private rescript: *FV* 282 (= *CJ* 3. 29. 4 + 8. 53. 6).

MAXIMIAN AS AUGUSTUS (286-305)

Edicts: None.

Letters: To Venustian in the *Passio Sabini*? (catalogue no. 41)

The following letters received in the west cannot be assigned beyond doubt: *CJ*

2. 13. 1, 7. 35. 3, 9. 9. 27, 9. 20. 7; poss. also 2. 10. 1, 7. 56. 3, 9. 2. 9.

Coll. 15. 3 and poss. *CJ* 5. 73. 4 are from Diocletian to Africa.

Private rescripts:

(a) Accepted by Mommsen: *FV* 41, 271, 292, 313, 315, *Cons.* 5. 7.

(b) Others: *CJ* 4. 24. 9, 6. 8. 1 = 7. 9. 3, 6. 59. 2, 9. 16. 5, 9. 45. 5, *FV* 290(?), *FV* 291(?).

CONSTANTIUS I AS CAESAR (293-305)

Letter/Private rescript: *CJ* 5. 12. 21.

GALERIUS AS CAESAR (293-305)

Edict: *Coll.* 6. 4.

Letter: *CJ* 2. 12. 20?

Private rescripts: *CJ* 4. 29. 18, 5. 12. 24-5, 8. 31. 2 (all dubious).

GALERIUS AS AUGUSTUS (305-6)

Edict: *CIL* 3. 12134 = *Inscriptiones Graecae* II-III². 1121.

Letter: *P. Oxy.* 2106.

SEVERUS AS CAESAR AND AUGUSTUS (305-7)

None.

MAXIMINUS AS CAESAR (305-10)

Edicts: The 'fifth persecution edict' (no. 22) and other persecution acts.

Letters: *CJ* 3. 12. 1 (poss. also 2. 12. 20 and 7. 16. 40); 6. 9. 7.

Private rescript?: *CJ* 5. 42. 5.

MAXIMINUS AS AUGUSTUS (310-13)

Maximinus' letter to Sabinus (no. 57) was issued as the response of a compliant if unwilling junior to the legislation of the senior emperor. His rescript to Tyre (no. 55) and the other cities and the letter *CTh* 13. 10. 2 were issued during the period when he claimed seniority. The status of his final edict of toleration (no. 33) is unclear, since it followed his military defeat by Licinius.

CONSTANTINE AS AUGUSTUS (306-12)

Private rescript: *FV* 32.

LICINIUS AS AUGUSTUS (308-24)

(a) Texts with Poss./Probable Attribution

Private rescripts: None.

Letters: Brigetio Tablet (*FIRA*² i no. 93), 'edict of Milan',

CJ 3. 1. 8, 6. 1. 3, 7. 16. 41, 7. 22. 3,

CTh 8. 5. 2, 9. 5. 1 (= edict *de Accusationibus*), 10. 14. 1.

Edicts: Edict *de Accusationibus*, *Inscr. Cret.* 1. 189, *CTh* 2. 30. 1, *CTh* 8. 4. 3 + 10. 7. 1 + 10. 20. 1 + 12. 1. 5.

(b) Rejected Texts

Private rescript: *FV* 34.

Letters: *CTh* 1. 27. 1, 4. 12. 1, 8. 1. 1, 11. 30. 12, 12. 1. 8, *CJ* 1. 13. 1.

Edict: *CTh* 11. 16. 3.

(c) Acknowledgements of Licinius as Augustus

(i) In inscriptions to documents: *CJ* 3. 1. 8, 6. 1. 3, 7. 16. 41, 7. 22. 3, Augustine, *Ep.* 88. 4, Eus. *HE* 8. 17. 5 (later dropped), Brigetio Tablet (later erased). Licinius implied by heading *Augg. et Caess.*: *FV* 33-6.

Licinius and Maximinus implied by address A. *GGG. NNN.*: Augustine, *Ep.* 88. 2.

Reference in trial *acta*: Optatus, *App.* II (ed. Ziwsa, 203).

(ii) Licinius Augustus as consul in subscripts: *FV* 32, 33, 274, *CTh* 11. 27. 1.



ADDITIONAL NOTES

p. 4 n. 11

The production of *palingenesiae* of imperial legislation has continued. The legislation of the House of Theodosius, 379–455, is published and discussed by Honoré (1998). The *Accademia Romanistica Costantiniana* volume for Valentinian and Valens 364–75 (Pergami 1993) has now been joined by Cuneo (1997) on the sons of Constantine 337–61.

p. 6 n. 16

The palace in Cordoba is now more realistically identified as an aristocratic residence, perhaps that of the provincial governor of Baetica (Arce 1997).

pp. 20–2: Eusebius

The debate over the 'editions' of Eusebius' *HE* and *MP* continues. See most recently Burgess (1997), suggesting that no edition of *HE* predates the fall of Maximinus in 313. An up-to-date English translation and commentary on the *VC* by Averil Cameron and Stuart Hall has just been published by Oxford University Press (1999).

p. 22: Augustine and Optatus

Note should be taken of one important but pre-tetrarchic constitution in Augustine, which provides the sole 'literary' reference to the Gregorian Code. Writing c.419, he cites a rescript of Caracalla, quoting its text from the Code, at *De Coniugiis Adulterinis* 2.7 (*CSEL* 41: 389–90). For full discussion of this passage, see de Churruca (1995). For the restoration of this rescript into the *CG* 'palingenesia', see *Collectio* 241.

A convenient recent English translation of Optatus by Mark Edwards has been published in the *Translated Texts for Historians* Series, 27 (Liverpool, 1997).

p. 22

For a comprehensive survey and catalogue of epigraphic texts of the tetrarchic period, see now Feissel (1995a); plus (1995b) discussing Constantine and beyond (as far as Manuel I).

p. 51 n. 60

An amnesty early in Diocletian's reign, following the death of Carinus (c. April 285; Barnes 1996: 536–7), now seems to be attested in a contemporary hexameter poem, which includes praise of Diocletian and his first prefect of Egypt (*P. Oxy.* 4352 frag. 5. ii. 18–28).

p. 78

For a recent survey of the pronouncements of Maximian, see Wieling (1995: 619–29), who divides them into the three categories, private rescripts, letters, and edicts (as at pp. 270–4 and 340 above). The list of Western rescripts he discusses (Wieling 1995: 621–5) largely matches my list here. However, he adds *CJ* 9. 12. 3 and 5. 1. 1, given/posted at Verona (April 293). This was emended to Heraclea by Mommsen (1860: 407, 429) to match Diocletian's itinerary (cf. his emendation of the other Verona rescript to Beroea: *CJ* 6. 59. 2; Barnes, *NE* 59). It is attributed to Hermogenian in the East by Honoré, *EL*² 168 n. 355.

Two rescripts were posted on 2 Nov. 285 at different but obscure places (*FV* 297, at 'Suneata'; *CJ* 4. 48. 5 = *FV* 23, at 'Atubinum'; both texts are assigned to 'Gregorius' serving Diocletian by Honoré, *EL*² 151 n. 82 and 154 n. 132). Suneata is probably Sunista near Poetovio and so part of the itinerary of Diocletian (Mommsen 1860: 414; Barnes, *NE* 50; *Itinerarium Antoninianum* 130. 2 and *Itinerarium Burdigalense* 561. 11). Atubinum has no such obvious identification, although Barnes, *NE* 50 suggests the neighbouring Civitas Iovia (having been changed to suit the tetrarchic divine *signa*? See *Collectio* 95 n. 12). Whereas the date of *CJ* 4. 48. 5 is amended in the standard edition to 3 Nov. to allow Diocletian to be in nearby places on successive days, Wieling (following Seeck 1889: 178) suggests that the logistics might be easier if Atubinum (wherever exactly it was) was on the itinerary of Maximian. And further, the lacunose *FV* 23 has sometimes been restored as referring to the fire that ravaged Rome under Carinus (see 116 n. 176 above), thus making a possible context for Maximian's involvement. If true (though I remain sceptical), this would furnish another rescript of Maximian as Caesar, even earlier than *FV* 282 and preceding Kolb's proposed *dies imperii* of 13 Dec. 285 (pp. 273–4 above). The evidence for Maximian's elevation is succinctly rehearsed by Barnes (1996: 537–9), where, in a slight modification of his view in *NE*, he concludes that Maximian was appointed Caesar in the early summer of 285, and Augustus on 1 April 286.

p. 92 no. 7: Claudius Eusthenius

Recent speculation has suggested that word-play has concealed behind the name Claudius Eusthenius the true identity of the *magister epistularum*: the historian Eusebius of Nantes (Paschoud 1995). This Eusebius has also been proposed as the author of the lost so-called *Kaisergeschichte*, believed to lie behind many fourth-century histories and chronicles (Burgess 1993b: 491–500). That a historian, writing in Latin (therefore not the same Eusebius of two Greek siege fragments attributed to Nanneticus (Sivan 1992)) and trained in the Gallic rhetorical tradition, should have become *magister epistularum*, even as Eumenius became *magister memoriae*, is entirely plausible, if unprovable.

Another possible *magister memoriae* might be the author of panegyric 11(3). The identity of the author of panegyrics 10(2) and 11(3) is based on the varying

readings of the heading to the latter, which give either the name Mamertinus, or the incomprehensible 'memet' taken by Seeck as a corruption denoting *magister mem<oriae> et <rheto(r) latinus>*, and that this is the office the speaker refers to obliquely at 11(3). 1. 2. However, neither the name nor the office can be conclusively deduced, nor are the two panegyrics even sufficiently close in style to assign them to one author. Scepticism is currently the best solution (Nixon and Rodgers 1994: 9–10, 41–2, 76, 81).

p. 94 n. 95

The anonymous philosopher at Diocletian's court described by Lactantius (*DI* 5. 2. 5) has been identified recently as either Themistius' grandfather (Ballériaux 1996: 138–42) or alternatively Porphyry (Digeser 1998). For the position of Lactantius himself, see also Silli (1995), who repeats an earlier suggestion that he even survived long enough to influence the style of Optatus, *App.* X in AD 330.

p. 125

Additional letter for the catalogue (Corcoran 2000): Diocletian and Maximian to Honoratus, before 293.

This constitution on incest is attributed to Diocletian and Maximian in a canon-law manuscript from Paris (dating c. 1200), where it shares a place with a famous fragment attributed to Book 20 of Livy, and two laws from *CJ* (5. 5. 4 and 5. 5. 6). Attested also in four other earlier manuscripts of *CJ* Books 1–9, apparently misplaced and attributed to Justinian under title 4. 35. Krüger relegated it to the notes of his *CJ editio maior* (p. 359 n. 3), but excluded it entirely from the *editio minor*; nor did he include it in the reconstruction of *CG* and *CH* at *Collectio* 236–45.

Honoratus is almost certainly a governor or some other official, so that the text is a letter, indeed very likely a rescript in reply to a *consultatio*. The recipient might be identified with the corrector of Italy from letter nos. 6–7, although there are other, perhaps more plausible, candidates, such as Titius Honoratus, prefect of Egypt (Barnes, *NE* 149). The constitution places restrictions on those born from incestuous marriages, forbidding them from acting in court as judges or advocates, or undertaking professions or offices, except where these incur burdensome *munera*, such as borne by *curiales* or *cohortales* (the latter being liable to the *primipili pastus*; cf. pp. 103–4 above). These restrictions appear similar in some ways to those placed on *infames*, and the text can probably be seen in the context of traditional Roman morality as emphasized by Diocletian and Gregorius (p. 173 above), as well as part of a long-standing and continuing imperial concern with maintaining proper demarcations of rank (cf. Constantine at *CTh* 4. 6. 2–3; Evans-Grubbs 1995: 284–7).

The language and style appear entirely consistent with other Diocletianic rescripts, although one technical *hapax legomenon* (*taxeotalis*) may represent later emendation, addition, or corruption. This text must have been included in

the Gregorian Code, but it is not entirely clear whether the medieval copies derive from *CJ* or more directly from *CG* or some epitome thereof. The text of this constitution, with a full discussion defending its authenticity, can now be found in Corcoran (2000).

p. 133 letter no. 33

The Elephantine letters have now been re-edited and reinterpreted by Feissel (1995a: 37–43) = *AE* 1995. 1616 = *SEG* 45. 2085. In addition to the two rescripts actually inscribed, other documents referred to (apart from the original petition to the emperor) seem to include two imperial letters to the *praeses* and the *dux* of the Thebaid respectively, and a letter of the *rationalis*. The exact sequence of documents is still not entirely certain, but the complex official interactions generated by a petition from below are clear.

pp. 134–5 letter no. 36 (edict no. 10)

The new fragments of the Currency Decrees remain unpublished. However, a reference to them with a photograph can be found at Smith (1996: 32 and fig. 27).

p. 145 n. 96

The article noted here, dating Miltiades' election to 310, has now been published as Davis (1997).

pp. 151–2 letter no. 56

The Ovack dossier (Ballance and Roueché forthcoming) has now been entirely removed from any Tetrarchic or Constantinian context and placed in the reigns of Probus and Carus, the various documents being dated between 278 and 283 (Zimmerman 1996, and Mitchell 1999: 161–4). Thus the prefect Valerius Euethius only later went on to serve Diocletian as *catholicus* in Egypt (Sijpesteijn 1995: 221–2).

pp. 175–6 edict no 5: Syrian taxation texts

As a complement to the Syrian *censitores* evidence, notice should be taken of the inscribed capitation or cadastral tables from Asiana and the Islands. These documents in Greek are undated, but are taken to show details of land or people at the turn of the third to fourth century, as assessed under a census of unknown date (which need not have been contemporaneous with the activities of the *censitores* in Syria). Thus, they also reflect the working of the tetrarchic state down at the local level. Most of the texts then known were gathered and discussed by Déléage (1945: 163–96). Some of these have since been republished and there are a few more recent fragments. Find-spots include:

Asiana: Hypaepa (*Inscr. Ephesos* vii/2: 355–9 nos. 3804–6); Magnesia on the Maeander (Déléage 1945: 194–5); Mylasa (Blümel 1987: 111–15 nos. 271–81, *SEG* 42. 1001, 1007, this last of Constantinian date); Tralles (Poljakov 1989: 202–8 no. 250).

Islands: Astypalaea (*IG* XII/3. 180-2); Chios (Déléage 1945: 183-4); Cos (*IGRR* iv. 1083, Segre 1993: ED151; a third as yet unpublished fragment has been identified by Tom Elliott of the University of North Carolina); Lesbos (*IG* XII/2. 76-80, Charitonides (1968) no. 17, Parker and Williams (1995) = *AE* 1995. 1438 = *SEG* 45. 1090); Thera (*IG* XII/3. 343-9; now re-edited in Kiourtzian 2000, who also notes the discovery of two unpublished fragments from a related list of δοῦλοι).

A possible similar inscription from Spain has recently been discussed and rejected (Teja and Carrié 1996). Unfortunately, epigraphic evidence for tetrarchic government in the Western provinces remains slight. An exception is the inscription of 323 from Volcei in Lucania, which lists, presumably for taxation purposes, the estates of L. Turcius Apronianus (*CIL* 10. 407 = *Inscriptiones Italiae* 3. 1 (1974) no. 17; Déléage 1945: 221-3 and Champlin 1980).

For traditional discussions of these texts, see Déléage (1945), and A. H. M. Jones (1953) and (1964: i. 61-6), though their interpretations are being constantly challenged and revised (cf. Duncan-Jones 1990: 199-210). For an up-to-date discussion of this evidence and Diocletian's fiscal policy as a whole, see now Carrié (1994), who is also cautious on the reliability of the passage from the Syro-Roman Law-Book.

pp. 178-9 edict no. 11: Prices Edict

Full details of the publication of Prices Edict fragments subsequent to Giaccherio's 1974 edition are given by Feissel (1995a: 43-5). Even more fragments have now come to light at Aphrodisias, some of which are published in Reynolds (1995).

pp. 183-4 edict no. 18: first Caesariani decree

Feissel (1995a, 1996) has now identified a copy of this constitution in Latin from Ephesus, by reassessing four fragments found at various times between 1898 and 1987. He has thereby also identified the second Padua text (p. 303 above) as the opening of this same constitution. The copies of this decree can now be summarized as follows:

- (A) Tlos (Latin): *CIL* 3. 12134; re-edited by Feissel (1996: 281-5) = *AE* 1996. 1498
- (B) Athens (Greek): *IG* II-III² 1121; re-edited by Feissel (1996: 278-81) = *AE* 1996. 1403
- (C) Ephesus (Latin): Feissel (1995a: 51-3) and (1996: 274-7) = *AE* 1995. 1478a-d
- (D) Padua, but ultimate provenance uncertain (Latin): *CIL* 5. 2781 lines 31-4 = Bruns' no. 95, identified as part of this text by Feissel (1995a: 51-3); from the same stone with part of the *edictum de Accusationibus*.

A new composite Latin text and French translation is provided by Feissel (1996: 285-6). Earlier translations into English can be found in Johnson *et al.* (1961), no. 300 (A + B) and no. 303 (D).

The Padua copy launches into its text without any diplomatics to separate it off from the preceding edict *de Accusationibus* (in contrast to the introductory titulature between the texts in *CIL* 3. 12133) and addresses the recipients as *conscientia vestra*. Although this might be taken as an address to the populace at large, I prefer to identify it, formally at least, as a letter. This term of address is attested once in *CTh* and not in *CJ* (*CTh* 8. 4. 25; cf. imperial self-references: *CTh* 13. 11. 4, 15. 1. 27, Val. III, *Nov.* 27. 2, Majorian, *Nov.* 4. 3). The more fragmentary Ephesus text seems to mirror this, although the conclusion of the preceding imperial titulature (with 'Caesares') is followed by a blank gap, which leaves no trace of either an edictal 'dicunt' or the name of any addressees. As suggested for the edict *de Accusationibus* (pp. 199–200 above), it is possible that this constitution existed in both edictal and epistolary form. Given that the second Caesariani decree and the edict *De Accusationibus* refer to letters sent to various officials, including the praetorian prefects, I favour the latter as the plural addressees. Although most surviving letters to prefects address a single recipient, there are examples of letters bearing the heading 'ad praefectos' (*CJ* 10. 42. 10 = letter no. 43 above; *CTh* 8. 4. 5, 8. 7. 4, 12. 1. 18).

While it might be tempting to suggest that the second Caesariani decree represents the edict and the first the letter, a number of points argue against this, most obviously their current datings a decade apart. Further, the discovery of a fragment of the second Caesariani decree at Ephesus makes it possible that fragments B and C from the first decree at Ephesus might belong instead to the second, along with the Padua copy (cf. Spagnuolo Vigorita 1987: 360 n. 70).

Feissel (1996: 286) is cautious about an exact date, but does suggest that the limit of 19 Sept. 305 (the reasons for this choice of date are unknown) is not retrospective, but rather forward looking, giving people advance warning and an opportunity to act, so that the constitution must have been issued in the very first months of the second tetrarchy, the type of indulgence especially appropriate to a new reign.

Association with the *edictum de Accusationibus* (especially via the Padua copy, if it has been correctly assigned) and the second Caesariani decree suggests that this constitution was only carved a decade after its initial promulgation as part of a dossier of texts (Feissel 1996: 288–9). The Greek version at Athens, however, may be contemporaneous, if it is seen, not as typical of administrative practice but as a sign of the same governor still in office three or four years after supporting the translation of the Prices Edict tariff into Greek.

pp. 184–5 edict no. 20: *CIL* 3. 578 (Corcyra)

Re-edited and discussed by Feissel (1995a: 45–6; cf. *AE* 1995. 1386). Although clear identification of the subject-matter of these texts is impossible, both documents, even in their fragmentary state, have echoes of the language of other constitutions, particularly the edict *de Accusationibus*. Thus the limited traces of the opening words of the second text match very closely the edict *de*

Accusationibus as restored by Feissel (1995a: 50), but it starts to diverge in the fourth and last surviving line of the text, and, given that the titulature can be clearly restored to give the second tetrarchy, it can hardly be identified as a seventh copy of that edict.

p. 186 edict no. 24: *CIL* 3. 6979 = *ILS* 660 (Sinope)

Re-edited by Feissel (1995a: 46) = *AE* 1995. 1424. The opening phrase can be restored as *Omnibus c]ognitum est*, imitating a phrase from the edict *de Accusationibus*. However, this text, dealing with enemy incursions into the provinces, does not match any other known constitutions.

p. 189 edict no. 33

The heading of this edict as given by Eusebius reads: 'Iobios Maximinos Sebastos'. If Eusebius is accurate here, this provides the only example, as far as I am aware, of any tetrarchic emperor using the divine *signa Iovius/Herculius* as part of the titulature prefacing a pronouncement. For Maximinus as *Iovius*, see also M. C. Şahin 1981 no. 310 and Barnes, *NE* 24.

pp. 190-1 edict no. 35: edict *de Accusationibus*

Feissel has identified a fragment of this edict at Ephesus, and also proposed a new reading of the opening words of the Lyttus text. The copies of this law, all in Latin, can now be summarized as follows:

- (A) Lyttus: *Inscr. Cret.* 1. 18. 188; Feissel (1995a: 49-50) = *AE* 1995. 1629
- (B) Tlos: *CIL* 3. 12133; the stone also contains the meagre traces of edict no. 25 (310)
- (C) 'Padua': *CIL* 5. 2781; the stone also contains part of a text now identified as the first Caesariani decree (305/6)
- (D) Sinope: *AE* 1957. 180
- (E) Pergamum: Habicht and Kussmaul (1986)
- (F) Ephesus: Feissel (1996: 287-8) = *AE* 1996. 1469
- (G) Law code extracts: *CTh* 9. 5. 1, *CJ* 9. 8. 3.

Composite versions are based mostly on the near-complete Lyttus text: Bruns⁷ no. 94, *FIRA*² 1. 94.

The existence of the Ephesus copy strengthens the eastern (Licinian) aspect of this law, while the identification of both the Caesariani decrees also at Ephesus and one of them on the Padua stone makes it appear likely that all three constitutions were circulated at the same time as part of a concerted measure, although many aspects of their interrelationships remain uncertain. This is further discussed under the next item.

p. 191 edict no. 36: second Caesariani decree

Feissel (1999a) signals the identification of a fragment discovered forty years ago at Ephesus as being from this constitution. He has kindly provided me with a provisional reconstruction of the text, which corresponds to the last eleven lines of the Lyttus inscription (*Inscr. Cret.* 1. 18. 189).

Feissel has also suggested that this edict is the 'alium edictum' referred to in the edict *de Accusationibus* (Feissel 1996: 289). Thus the date would be the same (314), and the emperor actively involved, Licinius (with or without the prompting or co-operation of Constantine). As noted above, it is possible that some of the Ephesus fragments attributed to the first decree might now be reassigned to this decree, along with the Padua copy. Spagnuolo Vigorita (1987: 360 n. 70) had already suggested that the Padua text was the opening of this decree. However, given that the Lyttus text calls itself an edict, the dichotomy of letter–edict noted above for the first decree would still apply here for the second decree.

The identification of this third tetrarchic text at Ephesus further highlights the tendency of the period towards multiple texts at multiple sites. Five imperial pronouncements are now found epigraphically at more than one site: the Prices Edict; both constitutions *de Caesarianis*; the edict *de Accusationibus*; Maximinus' Rescript on the Christians; cf. the multiple less permanent postings known or inferred from literary sources for the first persecution edict and Galerius' 'palinode' (edicts nos. 12, 26). Conversely, there are now nine cities providing evidence of more than one pronouncement on display, as follows:

Aphrodisias	Prices Edict, Currency Decrees
Athens	Prices Edict, first <i>Caesariani</i> decree
Cnossos	Prices Edict, unidentified letter (AE 1991. 1602)
Corcyra	dossier of two unidentified texts (edict no. 20)
Ephesus	both <i>Caesariani</i> decrees, edict <i>de Accusationibus</i>
Lyttus	second <i>Caesariani</i> decree, edict <i>de Accusationibus</i>
'Padua'	first (or second) <i>Caesariani</i> decree, edict <i>de Accusationibus</i>
Sinope	edict on enemy incursions (no. 24), edict <i>de Accusationibus</i>
Tlos	first <i>Caesariani</i> decree, unidentified edict (no. 25), edict <i>de Accusationibus</i> .

But it is not just that there are two or more pronouncements at these sites. The specific concatenation of texts seems significant. Of course, simple appearance on the same stone can mean successive rather than contemporaneous inscription, and the exigencies of space available may result in texts carved other than in chronological order (e.g. *CIL* 3. 12133 at Tlos; cf. the Archive Wall at Aphrodisias, Reynolds 1982: 37). But only at Pergamum does the edict *de Accusationibus* appear alone, and in four of the other five locations it is present with at least one of the *Caesariani* decrees, either on the same stone or with strong similarities in wording and carving. This suggests that, just as the Prices Edict appears in association with the Currency Decrees at Aphrodisias, so the edict *de Accusationibus* and the two *Caesariani* decrees were inscribed as part of a contemporaneous dossier (Feissel 1996: 288–9). Their exact inter-relationship, however, is not entirely clear, especially now that there is a possibility that some of the Ephesus fragments and the Padua copy might be reassigned from the first to the second *Caesariani* decree. For instance, does the

Padua Caesariani text represent the epistolary form of an edict, or an additional letter to officials as referred to in the second Caesariani decree and edict *de Accusationibus*? Is the second Caesariani decree the 'alium edictum' of the edict *de Accusationibus*? Is the first decree of 305 being inscribed for the first time in permanent form a decade after its original issue, being dusted off to provide additional support for later complementary measures. For instance, Spagnuolo Vigorita (1987: 366-71) explains this as dynastic policy, with Constantine reissuing his father Constantius' legislation to supplement his own. But the eastern emphasis of the epigraphy (with even the 'Padua' stone being of probable eastern origin) suggests that this was a policy actively pursued first by Galerius, and later followed by Licinius, whether or not they were acting in concert with their respective senior emperors (Constantius, Constantine).

The three new Ephesus texts, therefore, deepen the complexities surrounding these constitutions, without settling any outstanding controversies over dating or issuers. Indeed, it appears that, despite the large overall number of tetrarchic inscriptions, we are finding more copies but of fewer distinct constitutions! Feissel has found copies at Ephesus of three known constitutions, and reduced the number of overall enactments by identifying the Padua stone with another known text. And, as just noted, these three texts may represent a single concerted legislative programme. The pattern might be interpreted, not as a promiscuous stream of diverse legislative pronouncements undergoing constant inscription but as the rare and intermittent occurrence of intense promulgations of associated texts. Two large-scale imperial efforts (over the Prices Edict/Currency Decrees, and the Caesariani/Accusations edicts) account for most of the tetrarchic inscriptions. This may be a deceptive conclusion. Those pronouncements fortunate enough to survive in at least one near intact or extensive version, for that very reason enable the identification of further copies from even small fragments. Such fragments may not be easy to recognize, and might languish for long as incomprehensible remnants, but they do have a chance of being interpreted correctly, as is demonstrated by Feissel's impressive work on the recent Ephesus examples. But without a substantial *exemplum* as a paradigm, many fragments will remain unidentifiable as any sort of imperial text at all. If we could properly identify the fragmentary Corcyra, Sinope, Tlos, Cnossos, and perhaps even Cos texts (edicts 20, 24-5, *AE* 1991. 1602, *AE* 1947. 58), would we end up with some matches or associations with existing known texts; or instead, with six entirely separate constitutions?

The increase in the number of known epigraphic copies, however, still strengthens our evidence for the Tetrarchic era as the prime indeed almost the only period for multiple permanent copies of imperial pronouncements in Latin, and of our sense of active government at this time. Where before, cities inscribed 'dossiers' or series of imperial letters confirming civic privileges, now these 'dossiers' are of more proactive imperial pronouncements, carved rather by imperial or gubernatorial fiat than civic impulse. Thus the Prices Edict inscription at Stratonicea seems to peter out before completion of the tariff list (at *PE*

12. 11), a sign perhaps that the city's probable reluctance to spend money on this project outlasted the governor's enthusiasm for its enforcement.

The carving of sets of constitutions at apparently the same time suggests orders from above: the edict *de Accusationibus* and its associates appear in almost as many different provinces as there are copies, suggesting that there were about as many governors zealous in promoting permanent promulgation as was the case with the Prices Edict. Note that the proconsul of Asia in 314, with his promotion of epigraphic copies at Ephesus and Pergamum, contrasts markedly with his predecessor in 301 (Asian copies of the Prices Edict are not currently attested).

This need not be the only factor. Given that abuses by informers and Caesariani are precisely the types of activity that the cities and those in charge of them would be keen to inhibit, an incentive for carving them in stone could arise from below, with such imperial laws, although of general application, seeming to the cities as useful as their own peculiar privileges had once been (although such civic letters are still present, as at Elephantine and Tymandus (letters 33, 45), Orcistus (*FIRA*² 1. 95), and Hispellum (*ILS* 705)). Of course, impulses from above and below may coincide. A number of imperial texts give commands for permanent copies to be made, where the privileges they enshrine are very much of advantage to those so honoured to see publicly attested (p. 146 above), and the emperors are keen for their benevolence, especially when universal, to be plain for all their subjects to see (as highlighted in the texts from the Caesariani/accusations dossier). Nevertheless, an active imperial/gubernatorial effort to circulate laws restricting informers and Caesariani, although probably the prime agent in furthering inscriptions, may have been matched in some cases by the provincials' desire to see that the imperial beneficence was more than symbolic (cf. Harries 1999: 77–98). This may explain why these three pronouncements, in particular, enjoyed display on permanent materials.

p. 194 edict no. 47

The manuscript dating of 339 for the three *CJ* texts (6. 9. 9, 6. 23. 15, 6. 37. 21) is retained and attribution made to Constantius II by Cuneo (1997: 31–6).

p. 296 n. 5

To the list of imperial texts in Latin from the east, add a fragmentary text from Cos (*AE* 1947. 58, Segre 1993: ED187); a bilingual Latin/Greek letter to Eudoxius, *comes sacrarum largitionum*, from Mylasa (420s–430s; *CIL* 3. 448 = 3. 7151; repub. in Blümel (1987: 225–6) no. 611); and a Latin date for a Greek constitution of Maurice from 585 (*AE* 1908. 81 = *Inscr. Ephesos* i. 40); note also that a Latin version has now been found of the fourth–fifth century letter in Greek at *Inscr. Ephesos* iv. 1329, 1341 (another discovery by Feissel); for the west from Rome, a letter of Theodosius II and Valentinian III (431; *ILS* 2948), plus an unidentified fourth century letter (*AE* 1941. 68). For a recent survey of the inscription of imperial constitutions from Constantine onwards, see Feissel (1995b).

p. 303: *CIL* 5. 2781 lines 31-4 = Bruns⁷ no. 95; cf. *AE* 1995. 1478b Spagnuolo Vigorita (1987: 360 n. 70) suggested that this represented the opening of the second Caesariani decree, then only known at Lyttus (edict no. 36). It is currently assigned by Feissel (1995a: 51-3 and 1996) to the first Caesariani decree, along with a comparable fragment from Ephesus, although that was before the identification of a fragment of the second decree also at Ephesus. The exact relationship of this as an epistolary text to either of the decrees, which otherwise seem edictal in form, is not entirely clear.

One problem of this text, its apparent reference to the city of Rome in an eastern context (as noted at p. 290 above), can be emended away by the simple and surely correct solution that the wording has been erroneously inscribed as 'urbis romanae', instead of 'orbis romani' (Feissel 1995a: 51-2 following Krüger's disregarded suggestion in *CIL*).

p. 309: *IL Afr.* 269 = *AE* 1919. 30 (Thuburbo Maius)

This letter to Catullinus, proconsul of Africa, part of some dossier on the organization of the *stationarii*, is now republished as Schallmayer *et al.* (1990: 577-9) no. 747.

p. 332 n. 1

For a new reconstruction of the *adnotatio* from Orcistus, see now Feissel (1999b).

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The following abbreviations are used:

<i>AJP</i>	<i>American Journal of Philology</i>
<i>BIDR</i>	<i>Bullettino dell'Istituto di Diritto Romano</i>
<i>CP</i>	<i>Classical Philology</i>
<i>GRBS</i>	<i>Greek, Roman and Byzantine Studies</i>
<i>JRA</i>	<i>Journal of Roman Archaeology</i>
<i>JRS</i>	<i>Journal of Roman Studies</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
<i>MEFRA</i>	<i>Mélanges d'Archéologie et d'Histoire de l'École Française de Rome: Antiquité</i>
<i>RHDFE</i>	<i>Revue Historique de Droit Français et Étranger</i>
<i>RIDA</i>	<i>Revue Internationale des Droits de l'Antiquité</i>
<i>SDHI</i>	<i>Studia et Documenta Historiae et Iuris</i>
<i>TAPA</i>	<i>Transactions of the American Philological Association</i>
<i>TR</i>	<i>Tijdschrift voor Rechtsgeschiedenis (Revue d'Histoire du Droit)</i>
<i>ZPE</i>	<i>Zeitschrift für Papyrologie und Epigraphik</i>
<i>ZSS</i>	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)</i>

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GENERAL INDEX

Abbreviations: b. = bishop; *cons.* = *consularis*; *corr.* = *corrector*; *cos.* = consul; emp. = emperor; gov. = governor; k. = king; *mag.* = *magister*; ppo = praetorian prefect; *praef.* = prefect, *proc.* = proconsul; pu = urban prefect; vic. = vicar

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